Ekstrom Electric, Inc. *and* International Brotherhood of Electrical Workers, Local 461, AFL–CIO. Cases 13–CA–34882, 13–CA–36066, 13–CA–36168, 13–CA–36605, 13–CA–36606, 13–CA–36617, 13–CA–36624, 13–CA–36641, 13–CA–36642, 13–CA–36643, 13–CA–36644, 13–CA–36652, 13–CA–36666, 13–CA–36778, 13–CA–36780, and 13–CA–36826

December 31, 1998

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND BRAME

On August 31, 1998, Administrative Law Judge William G. Kocol issued the attached decision. The General Counsel filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions[1] and brief and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.[2]

The General Counsel has excepted to the judge's failure to find that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to provide the Union with requested copies of disciplinary records regarding unit employees. The judge declined to rule on this allegation on the grounds that it had not been alleged in the complaint, and the General Counsel had not moved to amend the complaint to include this allegation. Contrary to the judge, the record discloses that, on May 27, 1998, the General Counsel moved to amend the complaint to include this allegation. The record also shows that the judge granted the motion and admitted into evidence the amendment to the complaint.[3] Accordingly, we find that the allegation is before us.

We are, however, unable to determine the merits of this allegation on the basis of the record before us. In this regard, there is no dispute that the Union requested copies of the unit employees' disciplinary records by letter dated November 18, 1997.[4] However, the record contains contradictory testimony on the question of whether the documents were, in fact, provided. Thus, the Respondent's owner, Ron Ekstrom, testified that he provided the Union with disciplinary records at the parties' December 3, 1997 bargaining session. In contrast, Union Organizing Coordinator Richard Murphy, and Ron Howard, who was one of the Respondent's negotiators, testified that Ekstrom told the Union that no such documents existed. Union Business Manager Gerry Branson testified that Ekstrom told him that some disciplinary records did exist but that he never provided them to the Union. Under these circumstances, we shall sever the allegation and remand it to the judge for the purpose of making credibility determinations, findings of fact, and conclusions of law.

ORDER

The National Labor Relations Board orders that the Respondent, Ekstrom Electric, Inc., Batavia, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling employees to remove their union hats and T-shirts while they are at work.

(b) Giving employees the impression that their union activities are kept under surveillance.

(c) Threatening employees with unspecified reprisals because they support a union.

(d) Threatening to close the facility and relocate it because employees support a union.

(e) Threatening to discharge or lay off employees because they support a union.

(f) Interrogating employees concerning their union activity and sympathy and the union activity and sympathy of other employees.

(g) Instructing employees to report the union activity of other employees.

(h) Telling employees that they are discharged, because they support a union.

(i) Threatening employees that they would not receive a wage increase, because they supported a union.

(j) Giving the impression to employees that their union activities will be futile.

(k) Falsely blaming the Union for the smaller Christmas bonus given to employees.

(l) Threatening employees with bodily harm, because they engage in union activity.

(m) Refusing to continue to permit employees to use company-owned vehicles, because the employees engaged in a lawful strike.

(n) Reassigning employees from commercial work to residential work because the employees supported a union.

(o) Discharging, laying off, reducing the pay of, or eliminating overtime work for, or otherwise discriminating against employees, because they engage in union activity.

(p) Failing to provide the Union with information concerning the location of its jobsites.

(q) Failing to provide the Union with a copy of an explanation of its health insurance coverage.

(r) Unilaterally eliminating use of company-owned vehicles for transportation purposes, reassigning employees from doing commercial work to doing residential work, reducing the rate of pay for an employee, and eliminating the overtime work for an employee.

[1] The Respondent has not excepted to any of the unfair labor practices found by the judge.

[2] We have modified the Order to more closely reflect the violations found and to correct certain inadvertent omissions.

[3] G.C. Exh. 35.

[4] G.C. Exh. 18.

(s) Failing and refusing to bargain in good faith with the Union over terms and conditions of employment for the employees in the bargaining unit.

(t) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Warren Andrews, Greg Goorsky, Reginald Finegan, Martin Fredian, Stephen Sidbeck, Peter Sutter, Dwight Hartman, Nathan Dunaway, Richard Caddy, Peter Sivek, and Dale Jurgerson full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights or privileges previously enjoyed.

(b) Make Warren Andrews, Greg Goorsky, Reginald Finegan, Martin Fredian, Stephen Sidbeck, Peter Sutter, Dwight Hartman, Nathan Dunaway, Richard Caddy, Peter Sivek, and Dale Jurgerson whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of the judge's decision.

(c) Make Anthony Karbowski and Imre Denes whole for the losses they suffered as a result of the discrimination against them, and restore the practice that existed before the discrimination against them, both in the manner set forth in the remedy section of the judge's decision.

(d) Within 14 days from the date of this Order, restore the wage rate and overtime opportunities to Dale Jurgerson in the manner set forth in the remedy section of the judge's decision.

(e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges and layoffs and, within 3 days thereafter, notify the employees in writing that this has been done and that the discharges and layoffs will not be used against them in any way.

(f) Furnish to the Union in a timely fashion the information requested by the Union on November 7 and 18, 1997 concerning the location of the Respondent's jobsites and an explanation of the Respondent's health insurance coverage.

(g) On request, bargain in good faith with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time electricians, electricians-in-training, employed by the Respondent at its facility currently located at 106 North Raddant Road, Batavia, Illinois, but excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act, and all other employees.

(h) Treat the initial year of certification as beginning on the date the Respondent complies with this Order.

(j) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(k) Within 14 days after service by the Region, post at its Batavia, Illinois facility copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed any of the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 22, 1996.

(l) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the allegation that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide the Union with copies of the disciplinary records of unit employees is severed and remanded to Administrative Law Judge William G. Kocol for the purpose described above.

IT IS FURTHER ORDERED that the judge shall prepare and serve on the parties a supplemental decision setting forth credibility resolutions, findings of fact, conclusions of law, and a recommended Order, on the basis of the existing record, as appropriate on remand. Copies of the supplemental decision shall be served on all parties, after which the provisions of Section 102.46 of the Board's Rules and Regulations shall be applicable.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT instruct our employees to remove their union hats and union T-shirts while at work.

WE WILL NOT give the impression to our employees that we are keeping the union activities of employees under surveillance.

WE WILL NOT threaten our employees with reprisals because they support a union.

WE WILL NOT threaten to close our facility and relocate it because our employees support a union.

WE WILL NOT threaten to discharge or lay off our employees because they support a union.

WE WILL NOT coercively interrogate our employees concerning their union activity and support and the union activity and support of other employees.

WE WILL NOT instruct our employees to report the union activity of other employees.

WE WILL NOT tell our employees that they are fired because of their union support.

WE WILL NOT threaten our employees that we will withhold wage increases, because they support a union.

WE WILL NOT give the impression to our employees that their union activity will be futile.

WE WILL NOT falsely blame the Union for the smaller amounts given as a Christmas bonus.

WE WILL NOT threaten our employees with bodily harm because they support a union.

WE WILL NOT refuse to permit our employees to continue to use company-owned vehicles, because those employees engaged in a lawful strike.

WE WILL NOT reassign our employees from commercial work to residential work, because they support a union.

WE WILL NOT reduce they pay rate of our employees because they support a union.

WE WILL NOT eliminate overtime from our employees because they support a union.

WE WILL NOT discharge, lay off, or otherwise discriminate against our employees, because they support a union.

WE WILL NOT fail or refuse to provide the Union with relevant information that it has requested.

WE WILL NOT unilaterally change the terms and conditions of employment of our employees who are represented by the Union.

WE WILL NOT fail or refuse to bargain in good faith with the Union.

WE WILL, within 14 days from the date of the Board's Order, offer Warren Andrews, Greg Goorsky, Reginald Finegan, Martin Fredian, Nathan Dunaway, Peter Sivek, Stephen Sidbeck, Peter Sutter, Dwight Hartman, Richard Caddy, and Dale Jurgerson full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Warren Andrews, Greg Goorsky, Reginald Finegan, Martin Fredian, Nathan Dunaway, Peter Sivek, Stephen Sidbeck, Peter Sutter, Dwight Hartman, Richard Caddy, and Dale Jurgerson whole for any loss of earnings and other benefits resulting from their discharge or lay off, less any net interim earnings, plus interest.

WE WILL make Anthony Karbowski and Imre Denes whole for any losses resulting from our unlawful refusal to continue to permit them to use company-owned vehicles, with interest, and WE WILL, on request by the Union, restore this practice as it existed before we engaged in our unlawful conduct.

WE WILL restore the wage rate and overtime work for Dale Jurgerson to the levels that existed before our unlawful conduct against him, and WE WILL make him whole for any losses resulting from our unlawful conduct, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges or layoffs of Warren Andrews, Greg Goorsky, Reginald Finegan, Martin Fredian, Nathan Dunaway, Peter Sivek, Stephen Sidbeck, Peter Sutter, Dwight Hartman, Richard Caddy, and Dale Jurgerson, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the discharges or layoffs will not be used against them in any way.

WE WILL furnish to the Union in a timely fashion the information that it requested on November 7 and 18, 1997, concerning the location of our jobsites and an explanation of our health insurance coverage.

WE WILL, on request by the Union, bargain in good faith with the Union and reduce to writing and sign any agreement reached concerning terms and conditions of employment for our employees in the bargaining unit:

> All full-time and regular part-time electricians, electricians-in-training, employed by us at our facility currently located at 106 North Raddant Road, Batavia, Illinois, but excluding office clerical employees, profes-

sional employees, guards, and supervisors as defined in the Act, and all other employees.

WE WILL treat the Union's initial year of certification as beginning on the date that we begin complying with this Order.

EKSTROM ELECTRIC, INC.

Diane E. Emich and *Jessica Muth, Esqs.,* for the General Counsel.
Stanley E. Niew, Esq. (Niew & Associates, P.C.), of Oak Brook, Illinois, for the Respondent.
Richard Murphy for Charging Party, Local 461.
Robert Hutchinson for Charging Party, Local 701.

DECISION

STATEMENT OF THE CASE

WILLIAM G. KOCOL, Administrative Law Judge. This case was tried in Chicago, Illinois, on March 25, 26, and 27, April 6 and 7, and May 26 and 27, 1998. The charges listed in the caption of this case were filed beginning January 29, 1997,[1] and the order further consolidating cases, amended consolidated complaint and notice of hearing (the complaint) issued February 27, 1998. Two amendments to the complaint issued prior to the trial. The complaint as amended alleges that Ekstrom Electric, Inc. (Respondent) violated Section 8(a)(1) of the Act by making various and numerous unlawful statements to employees, violated Section 8(a)(3) and (1) by retaliating against, discharging, and laying off several employees, and violated Section 8(a)(5) and (1) by failing to provide the International Brotherhood of Electrical Workers, Local 461, AFL–CIO (Local 461 or the Union), with requested information, by making unilateral changes in terms and conditions of employment, and by failing to bargain in good faith. The Respondent filed a timely answer that denied the substantive allegations of the complaint but admitted the filing of the charges, commerce, jurisdiction, labor organization status, and relevant supervisory allegations.

On the entire record,[2] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a corporation, is engaged in the business of providing electrical contracting work from its facility in Batavia, Illinois, where it annually derives gross revenues in excess of $500,000 and purchases and receives goods and materials valued in excess of $50,000 from suppliers who have purchased the materials from outside the State of Illinois. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that International Brotherhood of Electrical Workers, Local 701, AFL–CIO (Local 701) and Local 461 are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

As indicated, Respondent is engaged in the electrical contracting business. It performs commercial and residential electrical work. Ron Ekstrom is Respondent's owner and supervisor. In 1991 Respondent had a collective-bargaining relationship with Local 701. During that year Respondent was fined $7000 by Local 701 and ordered to pay about $40,000 in backpay and benefits to employees for contractual violations. That same year Respondent filed an RM petition, and Local 701 lost the election.

During the summer 1995 Ekstrom told employee Chris Conforti that if union agents came around he should tell them that they are trespassing and not to talk to them. In February 1996 Conforti and other employees discovered that an employee was a union member. They told Ekstrom this and he replied that he would get rid of the employee. In about May 1996 Conforti told Ekstrom that another employee was a union member. Ekstrom replied that he was going to send the employee out to a distant jobsite and then tell the employee that there was no work at the site, and that when the employee called he would be told to go home.[3]

In 1996 organizational activities began again among Respondent's employees. On July 24, 1997,[4] Local 461 filed a petition seeking an election to represent Respondent's employees. Although both Local 461 and Local 701 actively participated in the organizing effort, only Local 461 filed the petition because Respondent's facility is located in Local 461's geographic jurisdiction. On September 2, an election was conducted among Respondent's employees and Local 461 won by a vote of 10 to 1. On October 27, Local 461 was certified as the exclusive collective-bargaining representative for Respondent's employees.[5] By the time of the hearing in this case, of the 11 employees who voted in the election only 1 employee remained employed by Respondent. That one employee is Matt White who is the only employee who requested that the authorization card that he had signed be returned to him.

B. *The 8(a)(1) and (3) Allegations*

1. Warren Andrews

The General Counsel alleges that Respondent unlawfully discharged employee Warren Andrews on about August 23. In early February 1996 Andrews met with Robert Hutchinson, organizer for Local 701; Andrews was looking for work. Hutchinson sent Andrews to apply for work at Respondent. Andrews applied for work on about February 10, 1996; he was

[1] The various filing and service dates for the charges are as described in the complaint. No party contends that the charges are inadequate to support the allegations of the complaint or that the allegations of the complaint are barred by Sec. 10(b) of the Act.

[2] The General Counsel's motion to correct transcript is granted only to the extent it is unopposed by Respondent. Specifically, items 15, 22, and 23 in the General Counsel's motion are not granted for reason stated by Respondent in its opposition. The General Counsel's motion is received into evidence as ALJ Exh. 1 and Respondent's response is received as ALJ Exh. 2.

[3] These facts are based on the testimony of Conforti, who I conclude is a credible witness. Although he was a union member at the time of the hearing, he was not alleged to be a discriminatee and thus had no direct monetary stake in the outcome of this case. Ekstrom testified at the hearing but did not deny these statements.

[4] All dates are in 1997, unless otherwise indicated.

[5] The unit is described as all full-time and regular part-time electricians, electricians in training, employed by the Employer, but excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act and all other employees.

hired by Ekstrom and began working that same day. Andrews worked as a pipe installer while he was learning electrical work. About 3 weeks later Ekstrom asked Andrews if the Union had sent him. Andrews answered no. On about March 6, 1996, Andrews overheard Ekstrom talking to another employee while they all were working. Ekstrom talked about firing yet another employee because he thought that employee was a union snitch and that he couldn't wait to get his hands on that "son of a bitch" Hutchinson. He said that the Union was trying to close him down and that if they tried he would open up a new shop under the name of RJ Electric. On June 26, 1996, Andrews attended a meeting of employees at Respondent's shop. At the meeting, Ekstrom handed out a piece of paper and asked employees to write down how the company could be improved. Andrews wrote down that it would benefit the employees if the company went union. Andrews repeated this verbally during the meeting. Ekstrom responded that he would not go union and made reference to the fines that he had paid when Local 701 had represented the employees. After the meeting Ekstrom told employee Chris Conforti that it would never work if they went union, that they were all lying, and that he would just close the doors and open up somewhere else. A few days after the meeting Ekstrom told employee Conforti that Andrews had "a lot of balls" bringing up the Union at the meeting.[6]

Before Andrews openly expressed his union support he had no work related problems with Respondent. However, afterwards Ekstrom began to refer to Andrews in derogatory terms, calling him "a fat lazy piece of shit" and that Andrews was a slow worker and that he should lose some weight. On July 23, 1996, Andrews, along with another employee, was working on a house in the Stonebridge project. Hutchinson visited the site that day. Later that day Ekstrom told Andrews and the other employee that if they were ever caught talking with Hutchinson while they were working that they would be fired.[7]

In August 1996, Andrews began displaying a union bumper sticker on the dashboard of his car. He gave a union cap to one employee and a union T-shirt to another employee. He also spoke to almost all the employees about the Union and how the Union would benefit them. During the third week of August 1996 Andrews came to work with a union T-shirt and union hat in his car. Ekstrom was not happy and told Conforti that he wanted to know if Andrews wanted to be fired. As more fully described below, on August 21, 1996, Ekstrom told Greg Goorsky, who at that time was an applicant for employment, that Andrews was a union snitch who would be gone by Friday. Later that same day Andrews heard from another employee that he was going to be fired that Friday because Ekstrom felt that Andrews was a union snitch. On August 22, 1996, the day before he was fired, Andrews wore a union hat to work. Ekstrom saw him wearing the hat and told him to take the hat off and he did so. The next day Andrews wore the union hat and a union T-shirt; and Ekstrom observed Andrews. This occurred about 10 a.m. Ekstrom commented to employee Goorsky that Andrews was gone. Ekstrom told Andrews to remove the union T-shirt.[8]

At about 3:15 p.m. that same day, employee Goorsky was complaining to Ekstrom about the work that had been done by another employee. Ekstrom, while looking at Andrews and holding two checks in his hand, said that Goorsky should not worry about it because they were getting rid of the problem. Andrews then asked whether that meant that Ekstrom was firing him. Ekstrom said, "yes." Andrews then called Ekstrom "a prick and a jagoff," and left. As Andrews was leaving Ekstrom said that he should tell Hutchinson that Ekstrom said hello. At no time during his employment had Andrews received any disciplinary action, nor did Ekstrom tell him that he was late too often.[9]

Ekstrom testified that Andrews was fired because of poor attendance. Specifically, Ekstrom asserted that Andrews kept on showing up late for work and that he received calls from other employees and from builders that Andrews was late. Ekstrom said that Andrews had taken off 13 days in a 6-month period. Records for an unspecified 27-week period show that on 13 occasions Andrews missed work for reasons indicated on the records such as sick, brake failure, car accident, grandpa sick, hurt back, upset stomach, court, and the like. The records also show that Andrews frequently worked over 40 hours per week.

Respondent also presented testimony from Robert Bean, a former owner of a builder that used Respondent for electrical work on certain projects. Bean testified that during the spring 1996 he observed that Andrews was late to work a couple of times a week for about 5 to 10 minutes and that Andrews could not keep up with the work of other of Respondent's employees on the site. Bean complained to Ekstrom that Respondent was not keeping up with the schedule.

Analysis

It is well settled that employees generally have a Section 7 right to wear apparel revealing their support for a union while at work. Here, Ekstrom directed Andrews to remove his union hat and union T-shirt. Such conduct violates Section 8(a)(1) of the Act.[10] *De Vilbiss Co.,* 102 NLRB 1317 (1953).

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[6] The facts are based on the testimony of Conforti and Andrews. Conforti in particular impressed me as a credible witness.

[7] None of these events are alleged to be unlawful in the complaint.

[8] The General Counsel alleges that these instructions are unlawful. These facts are based on the testimony of Andrews and Goorsky. I take into consideration the fact that some of Andrew's testimony was not included in his pretrial affidavit. However, I, nonetheless, conclude his testimony is credible. Importantly, it was substantially corroborated by the testimony of Goorsky, who not only was a credible witness but had also made notes of the these events near the time that they occurred. Ekstrom denied that ever asked Andrews about his union affiliation or that he ever asked Andrews or anyone to remove a union insignia such as a hat or T-shirt. As will be seen throughout this decision, I do not find Ekstrom to be a credible witness.

[9] This evidence is based on the testimony of Andrews, Goorsky, and Conforti, who I have concluded are credible, corroborative witnesses.

[10] The General Counsel, in his brief, string cites over 50 pages in the transcript and declares that they show violations of Sec. 8(a)(1) of the Act. None are treated on a individual basis. Many statements made by witnesses in this case could have been alleged to violations of the Act, but for whatever reason the General Counsel decided not to allege those statements in the complaint, nor did he seek to amend the complaint to thereafter include those statements. Thus, Respondent has no way of knowing which additional statements the General Counsel intended to allege as unlawful. Under these circumstances, I intend to hold the General Counsel to the allegations of the complaint. I do not intend to cull the transcript to identify and analyze every possible 8(a)(1) statement when the General Counsel has not fulfilled his burden of either alleging the violations or specifically identifying the statements individually in his brief and explaining why they should be found to be violative despite not having been alleged in the complaint. Even so the task of identifying which statements are covered by the complaint has

The analysis set forth in *Wright Line*[11] governs the determination of whether Respondent violated Section 8(a)(3) and (1) of the Act by discharging Andrews. The Board has restated that analysis as follows:

> Under *Wright Line*, the General Counsel must make a prima facie showing that the employee's protected union activity was a motivating factor in the decision to discharge him. Once this is established, the burden shifts to the employer to demonstrate that it would have taken the same action even in absence of the protected union activity.[7] An employer cannot simply present a legitimate reason for its actions but must persuade by a preponderance of the evidence that the same action would have taken place even in the absence of the protected conduct.[8] Furthermore, if an employer does not assert any business reason, other than one found to be pretextual by the judge, then the employer has not shown that it would have fired the employee for a lawful, nondiscriminatory reason.[9]

[7] *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 400 (1983).

[8] See *GSX Corp. v. NLRB*, 918 F.2d 1351, 1357 (8th Cir. 1990) ("By asserting a legitimate reason for its decision and showing by a preponderance of the evidence that the legitimate reason would have brought about the same result even without the illegal motivation, an employer can establish an affirmative defense to the discrimination charge.").

[9] See *Aero Metal Forms*, 310 NLRB 397, 399 fn. 14 (1993). *T & J Trucking Co.*, 316 NLRB 771 (1995). This was further clarified in *Manno Electric*, 321 NLRB 278 (1996).

Applying this standard, it is clear the General Counsel has satisfied its initial burden. The evidence shows that Andrews engaged in union activity by speaking in favor of the Union and wearing a union hat and T-shirt to work. As this was done in the presence of Ekstrom, Respondent obviously had knowledge of the activity. Respondent subjected Andrews to conduct found to have violated Section 8(a)(1) and that otherwise showed its hostility toward that activity. In its comments to Goorsky, Respondent directly linked Andrews' discharge to his union activity. Moreover, Andrews' discharge followed shortly after Respondent learned of Andrews' support for the Union; thus its timing strengthens the case of the General Counsel. The General Counsel had made a strong case.

As indicated, Respondent contends that Andrews was terminated for tardiness and poor attendance. I reject this assertion. I note that Andrews was never warned concerning such problems. Importantly, Respondent has presented no evidence concerning what its tardiness and attendance policy is; thus I have nothing to measure Andrews' record against. Furthermore it is quite apparent that Respondent long tolerated Andrews tardiness and absence levels before it learned of his support for the Union and that it was asserted to be a problem only after Respondent learned of this support. Witness the testimony of Bean concerning the alleged problems with Andrews that occurred in the spring, months before his discharge. Finally, I note the absence of any event that could have precipitated the discharge except Andrews' union activities. These facts, rather than showing a lawful motive for the discharge, only serve to show its pretextual nature and strengthens the General Counsel's case. Respondent's other arguments turn on facts that I have not credited. I conclude that Respondent has failed to meet its burden. It follows that Respondent violated Section 8(a)(3) and (1) when it discharged Andrews.

2. Greg Goorsky

The General Counsel alleges that Respondent unlawfully discharged employee Greg Goorsky on about August 28, 1996. Goorsky has been a member of Local 134, IBEW, since 1991. Goorsky applied for work at Respondent after having been sent there by Hutchinson. On August 21, 1996, Ekstrom interviewed him. During the interview Ekstrom began talking about the Union and said that he knew that he had sympathizers there and that he was not going to stand for it. Ekstrom said that he would close the shop and reopen down the street. Ekstrom said that he had an employee named Warren[12] who was definitely a union snitch and that Warren would be gone by Friday. Ekstrom asked Goorsky if he was a member of Local 701 or Local 461, and Goorsky replied that he was not. During a discussion of benefits Ekstrom said that he was not a signatory to a union contract. Goorsky was hired and began working the next day. That evening he received a telephone call at home from Ekstrom.[13] Ekstrom asked if Andrews had been talking about the Union. Goorsky answered no, and Ekstrom said that he had a couple of other employees who would be gone, and he named Chris and Jeff. On August 26, 1996, Ekstrom told Goorsky to tell him if Hutchinson had come out to the jobsite and given out cards, or if anyone was talking to Hutchinson. That evening Goorsky again received a telephone call at home from Ekstrom. Ekstrom began asking where Goorsky received his training. During the conversation Ekstrom asked if Goorsky had ever worked for Local 134. Goorsky replied that he had not.[14] Meanwhile, after working with Goorsky, Conforti concluded that he was a union salt. Conforti based this on the quality of Goorsky's work and the fact that Goorsky was bossy. A few days after Goorsky started working for Respondent, Conforti told Ekstrom that he thought Goorsky was a "union guy." Ekstrom replied that they would have to get rid of him.[15]

On August 28, 1996, Ekstrom appeared at the site where Goorsky was working. Ekstrom told Goorsky that he could not talk to Goorsky because Ekstrom had talked to his attorney. Ekstrom then spoke with Chris Conforti, who was also working on the site. Ekstrom told Conforti that to tell Goorsky to leave, to get rid of him because Goorsky was a union guy. After Ekstrom left the site, Conforti told Goorsky that he was fired, that Ekstrom had brought out his paychecks, and that he was fired because Ekstrom had figured out that Goorsky was part of the Union.[16]

not been an easy one since it is not always clear which statements the complaint was intended to cover.

[11] 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

[12] This is in obvious reference to Warren Andrews.

[13] I do not credit Ekstrom's testimony that he could not have called Goorsky at home, because Goorsky did not have a telephone at home. If this were the case Respondent certainly would have presented Goorsky's application or other record to show a no telephone indication for Goorsky. Ekstrom's bare oral testimony is not convincing.

[14] The General Counsel alleges that these remarks are unlawful.

[15] The General Counsel does not allege in the complaint that this statement was unlawful.

[16] These facts are based on a composite of the testimony of Conforti and Goorsky. I note that Goorsky testimony is corroborated to some extent by notes he made of conversations with Ekstrom near the time the events occurred. Goorsky also testified that Conforti said that Ekstrom had made up an excuse and that Conforti was to tell Goorsky that

Goorsky denied that he had ever received any criticism or disciplinary warnings while employed by Respondent. He also denied that Ekstrom had ever advised him that Respondent had received any complaints from customers or tradesmen. He also denied that he had ever called any homeowners, customers, or subcontractors any derogatory names. Goorsky testified that Ekstrom had specifically told him that he was pleased with the quality of Goorsky's work. However, Conforti admitted that he had heard rumors that Goorsky had upset a builder at the Clearwater Homes location.

Ekstrom denied that the subject of Andrews' union support was discussed in Goorsky's interview. Ekstrom testified that Goorsky began work on a Wednesday and worked through Saturday. The following Monday it was brought to his attention that Goorsky had insulted a homeowner and the homeowner wanted him removed from the job. Goorsky, however, was not fired until the following Thursday, August 30. Ekstrom explained why he did not fire Andrews on the spot when he heard the complaint by stating that he tries to give the employee the benefit of the doubt and tries to find out what the problem was and that he likes to get both sides of the story. In the meantime Goorsky was sent on another job. Ekstrom says that he visited the complaining owner on Monday or Tuesday and found out that Goorsky had called the owner's wife a dumb broad because she had asked Goorsky to change some fixtures. Ekstrom then conveyed this information to Goorsky, who then denied it. Ekstrom also testified that on the day that he was terminating Goorsky he gave Goorsky's check to Conforti and at that time Conforti remarked that Well that's a good thing since he's a member of 701. Ekstrom denied that he ever asked Conforti to interrogate employees about their union affiliation.

Respondent also presented the testimony of Frank Fulco Jr., in support of its case. Fulco is president of his own homebuilder company and that he used Respondent to perform certain electrical work in the past. He testified that during work on the Stonebridge project he complained to Ekstrom that he had received a report from the owner of a home being built that Goorsky had been rude to the owner's wife. Fulco stated that he told Ekstrom that he did not want Goorsky on the job, but that although he was not sure, he thought Goorsky remained on the job despite his complaint.

I credit the Fulco's testimony that he complained to Ekstrom about remarks made by Goorsky to his wife. I do not credit Ekstrom's testimony beyond that which Fulco corroborates. Ekstrom's testimony that it was Conforti, and not him, that raised the matter of Goorsky's union support at the time of Goorsky's termination is strikingly contrived. Instead, I credit the testimony of Goorsky that he never was advised by Ekstrom that there had been a complaint about his performance and thus he never had the opportunity to present his side of what had occurred.

Analysis

I have concluded that during Goorsky's interview Ekstrom told him that he knew that he had union sympathizers among his employees, and that he was not going to stand for it. This statement gave Goorsky the impression that Respondent was keeping the union activities of its employees under surveillance. This violates Section 8(a)(1). *Link Mfg. Co.,* 281 NLRB 294 (1986); *Sierra Hospital Foundation,* 274 NLRB 427 (1985). The statement contained an implied threat of unspecified reprisal. This also violates Section 8(a)(1). *Genesee Family Restaurant,* 322 NLRB 219, 224 (1996). Ekstrom's statement that he would close the shop and reopen it later is a threat of closure and relocation that violates Section 8(a)(1). *Woodline, Inc.,* 233 NLRB 97 (1977); *General Stencils, Inc.,* 195 NLRB 1109 (1972). Ekstrom's statement that Andrews was a union "snitch" and would be gone by Friday is a threat of discharge that violates the Act. *Carry Cos. of Illinois,* 311 NLRB 1058 (1993). Ekstrom's questioning of Goorsky concerning his Andrews' union affiliation is an unlawful interrogations that also violates Section 8(a)(1). Examining the totality of circumstances, especially that the interrogation occurred during an interview for employment, was conducted by the highest employer official, and was accompanied by other violations of the Act, I conclude that the questioning was coercive. *Sunnyvale Medical Clinic,* 277 NLRB 1217 (1985); *Rossmore House,* 269 NLRB 1176 (1984). Likewise, Ekstrom's instruction to Goorsky to report the union activities of other employees violates the Act. *Publishers Printing Co.,* 317 NLRB 933, 934 (1995).

As indicated above, the facts show and Ekstrom admitted that he instructed Conforti to discharge Andrews. As such it is clear that Conforti acted as an agent of Respondent for the purpose of communicating the discharge to Goorsky. Accordingly, Respondent is responsible for his conduct within the confines of this limited agency. As indicated, the General Counsel alleges that Conforti's statement to Goorsky was unlawful. Ekstrom told Conforti and then Conforti told Goorsky that Goorsky was fired because of his union support. This statement violates Section 8(a)(1) of the Act. *Atlas Transit Mix Corp.,* 323 NLRB 1144 (1997).

Turning to the matter of Goorsky's discharge, the credited facts show that Respondent learned that Goorsky was a union supporter. Respondent's animus toward union activity has been described above, and it had recently unlawfully discharged Andrews. Respondent also directed its unlawful conduct at Goorsky. Indeed, Goorsky's discharge was directly connected to his union activities by Ekstrom's statement to Conforti. Goorsky's discharge followed quickly on the heels of Respondent's discovery that he was a union supporter. I conclude that the General Counsel met his initial burden under *Wright Line* and has made a strong case.

Respondent contends that Goorsky was discharged because he made a rude remark to a customer. Indeed, the facts show that before Goorsky was fired a customer did complain to Ekstrom concerning Goorsky. But Respondent's burden in the face of the General Counsel's case is more than to point out that the alleged discriminatee made an error; Respondent must show that it would have discharged the employee for the error even absent his union activity. I conclude that Respondent has

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he was fired because he had said something derogatory to a contractor. Conforti does not corroborate this, and I conclude that Conforti is the more reliable witness. I, therefore, do not credit that portion of Goorsky's testimony. Finally, the General Counsel alleges that the statement made by Conforti to Goorsky at the time of his discharge was unlawful.

Returning to the notes kept by Goorsky, the General Counsel offered them into evidence late in the hearing after he had presented his case in chief. Over the objection of Respondent I received them into evidence, but only for the purpose of assisting me in making credibility resolutions and not as substantive evidence. The General Counsel has not asked me to reverse that ruling, yet in his brief his refers to the notes, G.C. Exh. 36, as if they were substantive evidence. I adhere to my ruling and use the notes only as assistance in determining the credibility of other testimony.

failed to meet its burden. First, based on my credibility resolution, I have concluded that Ekstrom never advised Goorsky of the complaint against him or give him the opportunity to respond. This tends to show that Respondent seized on the complaint as a pretext to fire Goorsky. Moreover, from the nature of the complaint it was apparent that Fulco was not seeking to have Goorsky fired but merely removed from the job. Respondent has not established that it regularly fires employees under these circumstances instead of transferring them. Finally, I have concluded that Respondent told Goorsky at the time of his discharge that it was his union support, and not customer complaints, that caused his discharge.

Respondent, in its brief, correctly contends that it need not show that Goorsky in fact was rude to the customer, but only that Respondent reasonably believed that he was. This misses the point since even so Respondent must show that it would have discharged Goorsky based on that reasonable belief even absent his union activity. It is here where the proof is lacking. While I am aware that Goorsky was employed by Respondent only for a matter of days and thus was not a long term, valuable employee, he is, nonetheless, entitled to the protection of the Act. I conclude that Respondent violated Section 8(a)(3) and (1) when it terminated Goorsky.

3. Reginald Finegan

The General Counsel alleges that Respondent unlawfully discharged employee Reginald Finegan on about April 11. Finegan has been a member of Local 701 for about 10 years. Finegan was directed to apply for work with Respondent by Hutchinson. He was interviewed and hired by Ekstrom, and he began working on about February 25. While employed there Finegan spoke to other employees, including Nathan Dunaway, about the benefits of unionization. On about April 10 Finegan wore a union T-shirt while at work. That day he also spoke to Ekstrom, asking him for a raise. While working at a jobsite that day Ekstrom asked Dunaway whether he had seen Finegan wear the T-shirt before. Dunaway answered yes.[17] Later that day Finegan again spoke to Ekstrom. Ekstrom commented that another employee was doing a good job and deserved a raise. Finegan agreed and said that he deserved a raise too. Ekstrom replied, not for a union boy.[18] The next day Finnegan again wore the union T-shirt to work. At around 3 p.m. Finegan again asked for a raise, and Ekstrom again said no. Later that day Ekstrom assigned the other employees on the job to report to another site the following Monday; Finegan was not assigned to that site by Ekstrom. Finegan then asked Ekstrom where he should report for work on Monday. Ekstrom told him to call the shop that Monday. The normal practice was for employees to continue to report to a jobsite while there was work to be done, unless a supervisor directed the employee to report elsewhere. The work on the site where Finnegan had been working was not completed.

That Monday Finegan called the shop a few minutes before it opened at 7 a.m.; no one answered the phone. He left a message stating that since no one was there he assumed that there was no work for him. Finegan called again a few minutes after 7 a.m. and left another message similar to the first message. Telephone records confirm that Finegan made calls to Respondent on Monday, April 14 at 6:52 and 7:04 a.m. Finegan then visited the union referral hall; he was referred for employment under the Union's referral system and he worked that day. Finegan was never contacted by Respondent to return to work. Two days later Finegan received a message from Respondent's secretary telling him to return Respondent's tools before he could receive his paycheck. The next day Finegan returned the tools and received his check from Ekstrom. Finegan thanked him and said goodbye. He was never told why Respondent failed to assign him more work. While employed Finegan never received any disciplinary action and was never told that his work was unsatisfactory or that he had caused any damage or accidents or otherwise failed to carry out company procedures.[19]

When asked why Finegan was terminated, Ekstrom answered, "We laid him off because of lack of work. Actually we did not lay him off. He quit and got another job." Ekstrom explained that Finegan was working on a job where the employees would be unable to continue working the following Monday because concrete was to be poured. The other employees had another job to finish up that Monday, but Ekstrom told Finegan to call him Monday morning so he could check the schedule.

Telephone records show that Respondent did make a telephone call to Finegan's residence on Wednesday, April 16 at 10 a.m. Alicia Smiley, former office manager for Respondent, testified that she called Finegan around that time and left a message on his voice mail for him to call back. Smiley explained that she wanted to advise Finegan where he should next report for work. Finegan called back the next day and said that he had been trying to call Respondent but no one was returning his calls. Smiley answered that they had been there, and that she had a job for him. Finegan replied that he had another job. Smiley further testified that she never received any other calls or messages from Finegan during that period of time. Ekstrom is married to Smiley's sister.

I do not credit Smiley's testimony that she called Finegan for the purpose of offering him a job, or that Respondent never received Finegan's calls. In part this testimony was gained through the use of leading questions. It also became apparent that part of Smiley's testimony was based not on her firsthand knowledge but on what she had been told by Respondent's attorney. Nor was her demeanor very persuasive. Under all the circumstances, I conclude her testimony was more designed to please her brother-in-law than be a straightforward recitation of the facts. Nor do I credit Ekstrom's testimony. The shifting reasons given by Ekstrom concerning Finegan—from lack of work to voluntary quit—within three sentences speaks volumes.

Analysis

As described above, Ekstrom asked Dunaway whether he had seen Finegan wear a union T-shirt to work before. There was no apparent justification for the questioning, and Finegan's discharge followed. Under the totality of circumstances, this interrogation violated Section 8(a)(1) of the Act. *Sunnyvale,* supra. Ekstrom also told Finegan that he could not get a raise because he was a union boy. Threats to withhold benefits because of union activity are unlawful. *Adam Wholesalers,* 322 NLRB 313 (1996). I conclude that Respondent's threat to

[17] The General Counsel alleges that this statement is unlawful.

[18] The General Counsel alleges that the statement, but not the failure to grant a raise, is unlawful.

[19] These facts are based on the testimony of Finnegan and Dunaway, who I conclude are credible witnesses.

withhold wage increases because of support for a union also violates Section 8(a)(1).

Turning to the legality of Finegan's discharge, the evidence shows Finegan engaged in protected union activity by wearing a union T-shirt to work on April 10 and 11. Ekstrom was aware of this activity, and he responded by unlawfully interrogating Dunaway about Finegan's protected activity and unlawfully threatening Finegan directly because of this activity. This, of course, occurred in the backdrop of the antiunion activity previously described. Moreover, the timing of the discharge is powerful evidence supporting the General Counsel's case, since Respondent stopped assigning Finegan work the second day that Finegan wore the union T-shirt. Finally, I note that Finegan was never told the reason why Respondent failed to continue to assign him work. I conclude that the General Counsel has met its initial burden under *Wright Line.*

Turning to Respondent's case, as the General Counsel points out in his brief, Respondent asserted in its answer that Finegan was terminated for failure to follow Respondent's instructions and policy. At the hearing, as described above, Ekstrom shifted from lack of work to voluntarily quit to account for Finegan's cessation of employment. In its brief Respondent argues that Finegan voluntarily quit. These shifting reasons warrant the inference that the real reason was an unlawful one, and I so conclude. *Scientific Ecology Group,* 317 NLRB 1259 (1995). Moreover, even an examination of the individual reasons given for Finegan's cessation of employment do not sustain Respondent's burden. Thus, I have discredited the testimony that Finegan voluntarily quit, I have discredited Ekstrom's testimony that there was a lack of work, and there is no evidence to support the assertion in the answer that Finegan failed to follow instructions and policy. Because Respondent has failed to show that Finegan's employment would have ceased even absent his union activity, I conclude that Respondent violated Section 8(a)(3) and (1) by discharging Finegan on April 11.

4. Martin Fredian

The General Counsel alleges that Respondent unlawfully discharged employee Martin Fredian on about June 20. Like many of the other alleged discriminatees, Fredian was sent to apply for work at Respondent by Hutchinson. Ekstrom interviewed Fredian in late May. During the interview Ekstrom asked whether Fredian was a member of the Union. Fredian said no, that he did not have any problems with the Union, but that at time he was not a union member. Ekstrom seemed pleased with that response and went on to relate how he had been union at one point and had been doing some work in downtown Chicago and had fired an employee, but the union came in and said that he could not fire the employee since he did not follow protocol. Ekstrom said that he would never turn union again and that he did want anyone trying to bring a union into his shop.[20] During the interview Fredian explained that he was in the process of being divorced and that this might involve some court time and other matters that might prevent him from being 100-percent reliable on the job. Ekstrom said that it would not be a problem. About 3 weeks later Fredian began working for Respondent. Respondent's summary of records shows that Fredian started work on June 10.

At some point after Fredian began working employee Imre Denes concluded that Fredian was a union member; this was based on a conversation they had. Denes then told Ekstrom that he thought that Fredian was affiliated with the Union or was a union spy. Ekstrom answered him.[21] On about June 17 Fredian was at a worksite with employee Dwight Hartman. That day Fredian was approached by an individual who asked him what type of work he was doing and who was doing the work. Fredian responded that he did not know; that he was a forklift operator. Fredian concluded from the nature of the questioning and the individual's appearance that he might be a union representative. He told this to Hartman. Later that day Ekstrom came to the site and Fredian told him that there had been a person on the site asking questions about the job who probably was a union representative. Ekstrom replied that they were working under the permit of a union contractor on the job and that if the union caused any trouble, "we'd throw them off the job."[22]

About 4 days before he was fired Fredian mistakenly connected an exit sign causing the light source to burn out when the power was applied. The sign was a used one and valued at about $70. Also, on several occasions Fredian communicated with the office of his divorce lawyer while at work. On June 18, one such call occurred; it was during working time and lasted about 40 minutes. He was told by employee Hartman, who was working with him that day, that he should be careful spending so much time on the telephone. Later that day Fredian told Ekstrom that he had been on the phone concerning his divorce for about 40 minutes and he offered to deduct that period of time from his pay. Ekstrom said that it was no problem. Also, employee Denes on one occasion saw Fredian using the telephone while on worktime as Denes was walking by the area where Fredian was working. Denes actually saw Fredian on the telephone for a minute or less. Denes reported this incident to Ekstrom. Likewise employee Hartman reported to Ekstrom that Fredian had been on the telephone on two occasions for 15 to 20 minutes and 45 minutes. Ekstrom also asked Hartman if Fredian had been smoking at a carpeted jobsite, and Hartman answered yes. Billing records from Fredian's divorce lawyer show that Fredian had a telephone conference with his attorney on June 13, 1997; the records do not indicate either the length or time of the conference. A legal secretary from the firm testified that Fredian called her on June 3 at 1 p.m. (this was before Fredian started work for Respondent), June 14 at 9:50 a.m. (a Saturday), June 18, and June 19 at unspecified times, but that there may have been more occasions, and that the conversations lasted, on average, about 10 minutes. The record is also unclear whether and when the calls were returned. I conclude, based on this evidence, that Fredian called his lawyer from work approximately two or three times in early June; two calls were short and one lasted approximately 40 minutes. Ekstrom, in general, was aware of this.

On June 20 Denes was told by Ekstrom to lay off Fredian. Ekstrom said that he thought Fredian was affiliated with the Union and that Fredian's work ethic was not that good. Denes had no authority to hire or fire employees and had never done so in the past.[23] That same day Fredian was told by employee

[20] The General Counsel does not allege in the complaint that anything in this conversation was unlawful.

[21] This conversation is based on the credible testimony of Denes.

[22] The General Counsel does not allege in the complaint that this conversation was unlawful.

[23] These facts are based on the credible testimony of Denes.

Denes that he had some bad news, that Fredian was fired. Fredian asked if Denes was joking, and Denes said, "no." Fredian asked why, and Denes said that Ekstrom said that it was bad work ethic. Fredian asked if Denes had more details since he had never worked with Ekstrom, but Denes said that he had no idea since everything that Denes had seen of Fredian's work had been great. Fredian then called Ekstrom directly and asked why he had been fired. Ekstrom also said, "bad work ethic." Fredian asked for some details, but Ekstrom said that he was busy and would call back. Ekstrom never called back.[24]

Denes had worked with Fredian on two occasions and testified that he felt that Fredian's work was satisfactory and that he reported that fact to Ekstrom. Denes also stated that he never had any arguments with Fredian nor did observe Fredian have any arguments with other employees, trades persons, or customers.

Ekstrom denied that he asked about Fredian's union affiliation. He did admit that he asked Denes to lay off Fredian. Ekstrom testified that Fredian called him on the day that Fredian was terminated. Fredian said that he understood that he was being laid off for talking too much on his cell phone. Fredian asked not to be laid off, that he would deduct the time from his timecard. Ekstrom testified that he was not aware that Fredian ever deducted any time from his timecard. He claims that he never received any timecard from Fredian other than for the week ending June 21, 1997, and that the Fredian was paid 40 hours for his final week even though he had not submitted a timecard. Ekstrom testified that he had concerns about Fredian's ability as an electrician. He related the incident where Fredian admittedly blew up the exit sign. He also testified that Denes reported to him that Fredian was smoking cigars in a carpeted area. This took place the Wednesday or Thursday before Fredian's termination. Ekstrom also testified that employee Hartman reported to him on a Tuesday or Wednesday while Hartman and Fredian were working on a job called DSC Logistics that Fredian was constantly on the telephone. This was three or four times a day and would last from 10 minutes to 40 minutes. I again conclude that Ekstrom's testimony is not credible. For example, his testimony that Hartman reported to him that Fredian was on the telephone three or four times a day from 10 to 40 minutes in unsupported by telephone records and uncorroborated by Hartman; it appears to obvious exaggeration.

Analysis

Assessing the legality of Fredian's discharge, the facts establish that employee Denes suspected that Fredian was a union supporter and communicated this suspicion to Ekstrom. This was after Ekstrom questioned Fredian concerning his union sympathy during his job interview. During that same interview Ekstrom voiced his opposition to the Union and did so again when Fredian reported that a union representative might have visited the site. Most compelling is the fact that Ekstrom directly linked Fredian's discharge with his union activity when Ekstrom explained to Denes the reasons that Denes was to fire Fredian. Finally, Fredian's discharge occurred in a context of Respondent's strong hostility to the union activity of its employees and a demonstrated proclivity to violate the Act to thwart such activity. Under these circumstances, I conclude that the General Counsel has met his initial burden under *Wright Line* and has shown that a motivating factor in Fredian's discharge was Respondent's suspicion that he was a union supporter.

Respondent contends that Fredian was discharged because he falsified his timecard by claiming time for which he did not work, pointing to the incident on June 18 when Fredian admittedly was on the telephone for about 40 minutes. However, I have credited Fredian's testimony that he reported the matter to Ekstrom and Ekstrom approved his suggestion that he sign out for that period of time. Thus, to claim later that this was the reason for Fredian's discharge appears to be nothing more than an afterthought. Importantly, Respondent admits that Fredian never submitted a timecard for that week; thus there is no evidence at all to show any timecard falsification for that week. Moreover, while it appears that Fredian did make other calls from work while on worktime, it must be noted that these calls were of short duration under personal circumstances that were explained to Ekstrom at the time he hired Fredian. The evidence shows that Fredian was not warned that Respondent felt that his calls were excessive and should stop. Nor has Respondent provided any evidence that it has a policy or practice that precludes the type of short personal calls made by Fredian. It bears repeating that Respondent's burden at this point is not simply to point to misconduct committed by an alleged discriminatee; it must present credible evidence that it would have discharged the alleged discriminatee for the misconduct. Few employees have perfect work records. I conclude that Respondent has not established that it would have discharged Fredian for his use of the telephone during working time even absent its suspicion that he was a union supporter.

Respondent also points to the mistake Fredian made connecting the exit sign. I note that this was not brought to his attention at the time it occurred. Nor has Respondent produced evidence that it regularly discharges employees for making mistakes, especially ones of a such a moderate nature as the exit sign. This argument appears to have been thrown in after the fact. Finally, concerning the assertion that Fredian was smoking in a carpeted area, Respondent has not even shown that it learned of this before Fredian's discharge, must less than it would have discharged an employee for this. Even considering the reasons asserted by Respondent for discharging Fredian in their totality, I conclude Respondent has failed to satisfy its burden. I further conclude that by discharging Fredian on June 20 Respondent violated Section 8(a)(3) and (1).

5. Events near the election

The General Counsel alleges that during a meeting of employees the Friday before the September 2 election Respondent unlawfully threatened employees with loss of wages and/or benefits and loss of steady employment if they selected Local 461 as their collective-bargaining representative. In support of this allegation the General Counsel presented the testimony of employee Matt White. At the hearing and in his pretrial affidavit White stated that during the meeting Ekstrom "told us that if

[24] These facts are based on the testimony of Fredian, who I conclude is a credible witness. Hartman, who I also conclude is a credible witness, corroborates his testimony in significant part. I note that Denes initially testified that he told Fredian that Fredian was being laid off because "I think you had a conversation with (Ekstrom) about the union, about being on the phone and his work ethic." Denes later testified that he told Fredian he was being laid off because "basically he was affiliated with the union and his work ethic and that if he wanted to talk about it he should call Ekstrom." Based on demeanor and the uncertain nature of Denes' testimony in this regards, I conclude that Fredian's testimony is more credible.

he went union, he said there wouldn't be anymore raises, but did not say why." Employee Hartman testified that during the meeting Ekstrom stated that he had been through a union organizing campaign before, and that if the employees voted the Union in, they would be subjecting themselves to layoffs and would probably be sitting on the union books and that the schooling that they had been promised probably would not materialize but if they voted against the Union the employees would continue work as it had been. Employee Sutter testified that at the meeting Ekstrom explained how the collective-bargaining process worked and that if the Union came in sometimes employees would be able to work full time and sometimes they would be laid off and not work for 3 or 6 months at a time, but with him the employees have been working year round. However, none of these remarks were contained in the two prehearing affidavits given by Sutter. Employee Karbowski testified that Ekstrom said at the meeting that when he had previously been in the Union he was always being laid off. Employee Zych testified that at this meeting Ekstrom explained the election procedure to employees and informed employees of what he thought and that of it, and that Ekstrom "didn't like it." Ekstrom denied that he threatened to close the doors if the facility went union.

Based on my observation of demeanor of the witnesses as well as the unclear nature of the testimony of the witnesses when viewed in context, I am unable to conclude that the remarks made by Ekstrom were unlawful. Because the General Counsel has not met his burden of proof, I shall dismiss this allegation of the complaint.

On the day of the election White had a conversation with Ekstrom in Ekstrom's truck near a worksite. Ekstrom asked what the Union had promised White, if there had been a union meeting, when the meeting was, and who was at the meeting. Ekstrom also said, "All this time you have been lying to me." This was in reference to the fact that White had earlier told Ekstrom that he had nothing to do with the Union. Ekstrom also said that he got White into the trade and now White was stabbing him in the back. Ekstrom then drove White back to the jobsite.[25]

6. Anthony Karbowski and Imre Denes and the vans

The General Counsel alleges that on October 15 Respondent unlawfully withdrew use of company vehicles from employees Anthony Karbowski and Imre Denes. In June or July Denes and Karbowski met with the Union and signed authorization cards. Denes also gave a card to employee Hartman. On September 2, the day of the election, Karbowski was at jobsite starting to plan his work. He told Ekstrom, who was also working on the site that day, that they should get the job organized. Ekstrom responded by saying, "Don't talk to me about organizing, you back stabbers."[26]

Prior to October 15 Denes and Karbowski had been allowed to use Respondent's vans to travel to and from their homes. On October 15 all the unit employees engaged in a strike called by the Unions. Employees picketed with signs that protested unfair treatment and unfair labor practices. The strike lasted only 1 day as it was quickly settled, and terms of the settlement are set forth in detail below. Ekstrom visited the worksite at Razny Jewelers that day, where employees Karbowski and Denes, among others, were participating in the strike and picketing. Robert Hutchinson, organizer for Local 701, was also at the site. Ekstrom asked Hutchinson what was going on, and Hutchinson explained that employees were protesting their unfair treatment. Ekstrom then commented to Karbowski and Denes that they would have to make a choice between the Union and himself, and the employees responded that they were staying out on strike. Ekstrom then asked for the keys to his vans. The employees noted that they had personal tools in the vans and asked to remove them first. After the vans were driven into a nearby parking lot and the personal tools removed, the keys were given to Ekstrom. The next day Karbowski asked Ekstrom if they were going to get the vans back. Ekstrom said that the vans were being repaired. As recently as January 1998 Ekstrom told Karbowski that the vans were still being repaired despite the fact that Karbowski had seen Ekstrom driving the same van that Karbowski used to drive.[27]

Ekstrom testified that after he learned of the strike he visited the jobsite and asked what was going on, but no one answered him. He then asked for the vans and asked that the employees remove their personal effects from the vans. Later the vans were taken to his house. Once there he decided to have them serviced. Invoice records for the service performed on the vans bear the dates of October 28 and 31. Ekstrom testified that the vans were taken for service the day after the strike and they were returned a day or two later. Ekstrom admitted that the vans were not returned to Denes and Karbowski. He explained that they were not needed on the jobs that were being done. Respondent contends that the vans were taken from the employees in order to have repairs done on them. Denes admitted that there were a lot of things wrong with the van he used.

Meanwhile, in October 1997 employee James Bonta was interviewed for employment by Ekstrom. During the interview Ekstrom said that he was going through trouble with the Union, and he asked Bonta how he felt about unions. Bonta said that he tried a union a longtime ago and never got in. Ekstrom said that the unions were taking his good employees.[28]

Analysis

Questioning of an employee concerning his union sympathies during the employee's employment interview has been held to be unlawful. *American Signcrafters,* 319 NLRB 649 (1995). This is especially the case here because Ekstrom specifically told Bonta that he was having trouble with the Union. I conclude that by interrogating Bonta concerning his union sympathies, Respondent violated Section 8(a)(1).

Turning to the van issue, the facts show that at the very time that Denes and Karbowski were engaged in a protected work stoppage, Ekstrom took from them the vans that he had previously permitted them to use. This was after Ekstrom has asked them to make a choice between him and the Union and the

[25] The General Counsel does not allege that these statements are unlawful.

[26] The General Counsel does not allege that this statement is unlawful.

[27] These facts are based on the testimony of Hutchinson, Sutter, Denes, and Karbowski, who I conclude are credible witnesses.

[28] This conversation is covered by an allegation in the complaint. The facts are based on the testimony of Bonta, who is currently employed by Respondent. I also note that Bonta is not alleged to be a discriminatee. I consider the fact that about a week before Bonta testified Ekstrom commented to him that he was a hostile witness. Also considering demeanor, and even considering the variations of his testimony from his pretrial affidavit, I conclude that Bonta is a credible witness.

employees had stated that they would remain on strike. Respondent's pattern of hostility toward supporters of the Union has been described above and need not be repeated here.

Respondent contends that the vans were removed from the employees, because they needed repair. I conclude that this is an afterthought and that Respondent decided to repair the vans after it had removed them from the employees. Ekstrom's explanation as to why they were not returned to the employees after the repairs were completed is equally unsupportable. I conclude that the credible evidence clearly shows that Respondent refused to permit Karbowski and Denes to continue to use the company vehicles because those employees engaged in a lawful strike. Respondent thereby violated Section 8(a)(3) and (1).

7. Grant of a wage increase

The General Counsel alleges that October 1997 Respondent granted a wage increase to employees who voted to reject the Union. In support of this allegation the General Counsel apparently relies on the testimony of former employee Zachary Zych. Zych served as Respondent's observer at the election on September 2 at which, it will be recalled, the vote was 10 to 1.

A summary of Respondent's business records indicates that Zych began working for Respondent on May 12 and received a $2-per-hour raise on November 13.[29] Zych testified that Ekstrom told him during his interview for employment that after 6 months there would be a review of his work and that if his work was good he would receive a raise and that the raise averaged about $2 per hour. Zych further testified that in about October he reminded Ekstrom that his review and raise were coming due and that he thereafter did receive the raise on about November 10.

Meanwhile, as will be more fully described below, Respondent and the Union had begun bargaining for a contract. According to Murphy, at the bargaining session of December 3 he asked why Respondent was giving raises to employees. Among other things, Ekstrom responded that Zych was due for a raise. Ekstrom's version of this meeting is that Murphy asked him why Zych had received a raise and Ekstrom explained that it was company policy that after a new trainee worked 6 months his performance was reviewed to decide if the trainee deserved a raise since their pay started at such a low level. Murphy asked if the reason that Zych was given a raise was because he had voted against the Union in the election. Ekstrom replied that that was definitely not the reason.

Respondent also points to the January 14, 1998 letter that it sent to the Union confirming this practice and advising the Union that employees Sivek and White would be receiving raises effective January 14, 1998, in the amount of $2 per hour. The General Counsel argues that employee Richard Caddy was also hired in May 1997, but he did not receive any raise after 6 months. Records show that Caddy was indeed hired on May 1997 and that as of March 26, 1998, he still was receiving $18 per hour. Ekstrom testified in this regard that Caddy was not due an increase because company policy is that journeyman such as he are to be reviewed once a year in June and he explained this to Caddy in December 1997 or January 1998, and that if Caddy expected a raise in June his production would have to improve.

Analysis

Turning first to the mater of credibility, I conclude that when Zych was hired he was told by Ekstrom that after 6 months, if his work was acceptable, he would receive a wage increase of about $2 per hour, and that about 6 months later he received that increase. Although I have not been inclined to credit the testimony of Ekstrom, it does not follow that all of his testimony is not credible. Here, his testimony is corroborated by Zych and supported by a summary of documents. Importantly, Ekstrom's assertions in this regard has not shifted since, even according to Murphy, Ekstrom said last year that the reason Zych received the increase was because he was due one. Under these circumstances, I find it unnecessary to resolve the issue raised by both parties concerning what Respondent's practice was of granting raises to other employees. It is sufficient that Ekstrom promised the increase to Zych, unrelated to any union activity, and thereafter fulfilled the promise. The fact that in the interim Zych served as Respondent's observer at the election does not render the fulfillment of the promise unlawful. I conclude that the General Counsel has not established that the wage increase granted Zych was unlawful, and I shall dismiss this allegation of the complaint.

8. Peter Sutter

The General Counsel alleges that Respondent unlawfully reduced the wages of employees Matt White and Peter Sutter on about September 15 and unlawfully laid off or terminated Sutter on about December 12. Sutter worked for Respondent as an electrician from October 1996 to November 7, 1997. In August, Sutter spoke with another employee about the Union and then received a call at home that night from Murphy who also spoke to him about the Union. Thereafter Sutter signed an authorization card for the Union while he was at a worksite.

In early August Ekstrom asked employee Caddy to fire Sutter. Caddy asked if he could do so after the job that he and Sutter were working on was completed, and Ekstrom agreed. The following Monday Ekstrom asked Caddy whether he had fired Sutter. Caddy answered that he had not because the job was not yet completed. Ekstrom then said that Caddy should have fired Sutter the week before because it was then too late since it was too close to the election.[30] Respondent has offered no explanation of its conduct in this regard.

About a week after the election Sutter's wages were reduced. That night Sutter called Ekstrom and asked why his wage rate had been dropped. Ekstrom said that he could not discuss the matter with him, but asked whether Sutter would file charges against him. The next day at a worksite Sutter again asked why his wage rate had been reduced. Ekstrom said that Sutter should probably talk to his union representative about the matter. At the hearing Sutter was asked by counsel for the General

[29] In his brief the General Counsel implies that these records are not accurate since Zych's paystub for the November 7 shows that Zych was already receiving his pay increase. However, the General Counsel was given the opportunity to review the underlying documents that formed the basis for the summary and made no argument that the summary was inaccurate. Under these circumstances I will not consider arguments concerning the reliability of the summaries.

[30] These facts are based on the testimony of Caddy; I conclude that he is a credible witness. These conversations are not alleged to be unlawful in the complaint. In his brief the General Counsel urges that I find that in mid-August White told Ekstrom that he thought Sutter was prounion. However, White's testimony in that regard is too muddled for me to conclude anything specific concerning what was said during that conversation.

Counsel whether Ekstrom said anything during either of these conversations about Sutter's wages being connected at all with the union election. Sutter answered no. Sutter was then asked whether Ekstrom said that he had given Sutter any prior warning regarding his wages. Sutter answered, "Yes." He had told me that this was what would happen if you voted for the union.[31] I do not credit the latter testimony. I note that Sutter did not relate testimony during his initial description of the conversations. I conclude Sutter's testimony on this matter is too uncertain for the General Counsel to carry his burden. I, therefore, need not decide whether this allegation was subsumed by the settlement described below.[32]

Sutter participated in the strike on October 15. At the November 5 bargaining session, Ekstrom told the Union that Sutter might be laid off; Ekstrom told the Union that Sutter had "cost him 5 contractors." The evidence shows that Sutter was laid off November 7. That day Ekstrom told Sutter that he had no work for Sutter and employee Dwight Hartman and that they were to report to their local union hall.[33] Sutter testified that at the time he was laid off Respondent had worked that he could have performed.[34]

Respondent contends that Sutter was laid off for lack of work. At the time of the layoff Sutter was working on the Razny Jeweler site. Records show that for the week in which Sutter was laid off Respondent worked 207 hours at that site. For the weeks preceding that time period Respondent worked 313, 196, 91, 131, and 104 hours at the site. For the 2 weeks following the week of the layoff Respondent worked 126 and 46 hours at the project at which time essentially no more work was done at the site. Ekstrom further admitted that Respondent had an option to bid on additional work at the site, but as of the date of the hearing did not yet have a contract to perform the work. No further explanation of this situation was given. Respondent further points out that the Union was given notice of the layoff at the November 5, 1997 bargaining session, more fully described below. Ekstrom testified that Murphy was aware that the Razny Jeweler project was winding down and that Respondent would be cutting its work force at the job.

Analysis

As indicated above, on November 7 Ekstrom told Sutter and Hartman that there was no work for them and they should report to the union hall. There is no hiring hall arrangement thus there is no valid reason why Ekstrom should have made reference to reporting to the union hall. In context, this statement reasonably indicated to the employees that they were being laid off because they were union supporters. As such, this violates Section 8(a)(1). *OBARS Machine & Tool,* 322 NLRB 275 (1996).

Turning to the matter of Sutter's layoff, the evidence shows that Sutter was a union supporter and that before the election Ekstrom attempted to have Caddy fire Sutter for no other apparent reason than because of his union activity. Thereafter, the election resulted in a 10 to 1 vote in favor of the Union. Then the Union settled the matter of Sutter's wage reduction as part of the strike settlement. Respondent's animus toward the union activity of the employees has already been set forth in detail above. Finally, at the time of the layoff Ekstrom made a direct connection between the layoff and the Union. Under these circumstances, I conclude that the General Counsel has met his initial burden under *Wright Line* of showing that Sutter was unlawfully laid off on November 7.

At the November 5 bargaining session, Ekstrom asserted that Sutter had cost him five contractors. However, at the hearing it presented no credible evidence to support this assertion. Respondent also has asserted that Sutter was laid off due to a lack of work. To be sure the project that Sutter had been working on—Razny Jeweler—was winding down. However, the records show that Respondent continued to perform some work at that site for at 2 weeks after Sutter was laid off. In any event, even assuming that work on that project had ended, it does not necessarily follow that that Sutter would have been laid off. This is so because Respondent has a policy of transferring employees to other sites when work on one project is completed. Thus the issue with Sutter becomes whether Respondent has established that there was no work available and that Sutter would have been selected for layoff. Since Respondent makes a lack of work argument for other laid-off employees, that argument will be addressed below after the cases of the other alleged discriminatees are discussed.

9. Dwight Hartman

The General Counsel alleges that Respondent unlawfully laid off and/or terminated employee Dwight Hartman on about November 15. Hartman began working for Respondent in April or May. Hartman was given a union card by employee Denes. Hartman joined the 1-day strike previously described. In late October or early November, Hartman overheard a conversation between Karbowski and Ekstrom at a jobsite. Ekstrom said that there was no way that he was ever going to sign a union con-

[31] The General Counsel alleges that this statement is unlawful.

[32] Respondent contends that the matter of the reduction of wages for Sutter and White was settled as part of the settlement that ended the 1-day strike on October 15. The record shows that on October 17, Respondent's attorney sent a letter to Local 461's attorney confirming a discussion whereby Respondent agreed to increase Sutter's pay from $12.50 to $16 per hour and White's pay from $9 to $11 per hour. Those employees were to receive back wages for the difference in their next paycheck. As part of the settlement Respondent requested that the unfair labor practice charges concerning this matter be dismissed. The letter also stated that "I hope that this will cause both Locals [sic] cease their pickets." On October 24 Local 461's attorney replied by letter specifically confirming the wage rates that White and Sutter would be raised from and to. The letter also stated that the Union would withdraw the charges it had filed on this matter and that it would not engage in any unfair labor practice picketing against Respondent concerning this matter. The parties agree that Respondent paid the employees the backpay and gave them the raises as described in the letters. However, at the hearing the General Counsel and Local 461 argue that the settlement should not bar the litigation of this matter because, according to them, Sutter's pay was actually reduced to $12 per hour and therefore he was actually owed more backpay in the amount of approximately $95. There is no contention that Respondent willfully mislead Local 461 on this matter or that Local 461 could not have discovered this matter with the exercise of due diligence. I concluded at the hearing that this matter was settled and thus may not be litigated. In his brief the General Counsel does not argue that my ruling at the hearing was incorrect, nor does he continue to argue the merit of the allegations covered by the settlement. I conclude that the General Counsel had acquiesced in my ruling, and I shall dismiss those allegations of the complaint.

[33] The General Counsel alleges that this statement is unlawful.

[34] The evidence in this portion of the decision is based on the testimony of Sutter. Except as specifically indicated above, I conclude that Sutter's testimony is credible.

tract and that he was going through the motions and playing the game.[35]

In around November employee Bonta called Ekstrom and asked for help on the project he was working on because they were behind schedule. Ekstrom said that he was going to send over Hartman and employee Brian Adams. Ekstrom said that Hartman and Adams were troublemakers with the Union and that Bonta should not talk to them. Ekstrom also asked whether Hutchinson had been at the jobsite, and Bonta said, "no."[36]

At the November 5 bargaining session, more fully described below, Ekstrom told the Union that work was slowing down and he might have to lay off employees; he mentioned Hartman as one employee who might be laid off. Murphy[37] asked Ekstrom why he had selected Hartman, and Ekstrom replied that Hartman was dangerous and did not want to work overtime. About 3 days before he was laid off Hartman received a telephone call from Murphy advising him that Respondent would be laying off some employees.

On November 7, Ekstrom came out to the site where Hartman and Sutter were working. Ekstrom said that the employees knew what was coming, and Hartman said, "yes, he did." Hartman asked for his check, and Ekstrom said that he did not have it. Hartman asked for the reason why he was being laid off. Ekstrom said work was slow. Hartman asked if the employees hired after he was were laid off, and Ekstrom said, "yes." At the time of the layoff there was other work being done.[38]

Ekstrom explained that Hartman was laid off and that the Union was advised of this during the November 5 bargaining session and it never objected. Ekstrom also testified that during the December 3 bargaining session he gave the Union some undated documents typed on Respondent's letterhead, including one concerning Hartman that indicated that during the week of October 6, 1997, Hartman took 4 days off from work; 2 days were excused and two were not. It also indicated repeatedly the Union BAs (Bob Hutchinson and Rich Murphy) badgered Ekstrom Electric employees while they were on the clock, which is illegal. I do not credit this testimony; in context, it appears contrived and was not corroborated by Dick Howard, who was also present for Respondent at the bargaining sessions. I conclude that this and similar documents were made after the fact and were never shown to the employee or provided to the Union. This is another example of why I generally determined that Ekstrom's testimony is not credible.

Analysis

Ekstrom's statement that he was never going to sign a contract with the Union indicated to employees that there union activities would be futile as a result of Respondent's unlawful conduct. As such this violated Section 8(a)(1). *Woodline, Inc.,* 233 NLRB 97 (1977). Ekstrom's questioning of Bonta concerning whether a union representative had been at the site, in the context of Respondent's hostility toward the union, was an unlawful interrogation in violation of Section 8(a)(1). *Sunnyvale Medical Clinic,* 277 NLRB 1217 (1985).

Turning to Hartman's layoff, the evidence shows that Hartman engaged in union activity and Ekstrom had identified Hartman as a union troublemaker. Indeed, as described below, Ekstrom had revealed that he felt that his entire work force was not loyal and he was going to get rid of everyone. I need not repeat the extent of Respondent's animus and the continuing nature of the now apparent plan to fulfill the promise to get rid of the entire work force. I conclude that the General Counsel has met his initial burden under *Wright Line* showing that Hartman was unlawfully laid off on November 7.

At the bargaining session on November 5, Ekstrom asserted that the reason Hartman was selected for layoff was because he was dangerous and did not want to work overtime. However, Respondent presented no evidence to support or explain these assertions. I conclude that it was simply a total fabrication. This tends to strengthen the General Counsel's case since it shows that Respondent is seeking to conceal the true reason for selecting Hartman for layoff. Respondent's argument concerning lack of work for Hartman will be addressed below with the others.

10. Stephen Sidbeck

The General Counsel alleges that Respondent unlawfully laid off or terminated employee Stephen Sidbeck on November 12. Sidbeck worked as an electrician for Respondent from October 13 to November 11. He was sent to Respondent by Hutchinson and was interviewed for the position by Ekstrom on October 9. During the interview Ekstrom stated that he noticed that Sidbeck had worked for employers who had recognized Local 134 and Local 979. Ekstrom asked if Sidbeck had any affiliations with any union. Sidbeck said, "no," that he had worked for Local 134 on a permit basis and that he was not a member of any union. Ekstrom went on to say that the hardest thing was to get loyal employees and he was not happy with his employees and he was going to clean house and get rid of them all. He stated that the Union had given all of his employees' cards and they were not loyal to him anymore.[39] On October 14 Sidbeck attended a meeting held at Local 701's hall where they discussed the reasons for the strike planned for the next day. On October 15 Sidbeck was at a site in Lockport with employees Peter Sivek and Matt White. At about 8:30 a.m. all three employees stopped work and joined the strike that day.

Meanwhile, as more fully described below, the parties had begun bargaining for a contract. At the November 5 meeting Ekstrom told the Union that he was contemplating layoffs and mentioned several employees by name; Sidbeck was one of the names he mentioned.[40]

On November 5, Sidbeck was present for a conversation between Ekstrom and employee Sivek at a jobsite in Woodale. Ekstrom mentioned that he had a meeting with Murphy that

[35] The General Counsel alleges that this statement is unlawful.

[36] This conversation is based on the credible testimony of Bonta. Only the interrogation aspect of the conversation is covered by an allegation in the complaint.

[37] Richard Murphy is the representative for Local 461 who, as explained below, engaged in bargaining with Respondent.

[38] These facts are based on testimony of Hartman, who I conclude is a credible witness. After reviewing the testimony of Hartman and Sutter, who were both laid off November 7, I conclude that they had separate conversations with Ekstrom and this accounts for the different content of those conversations.

[39] The General Counsel alleges that these statements are unlawful.

[40] Murphy testified that Sidbeck's name was *not* one of the employees mentioned by Ekstrom as being laid off. Although I generally credit the testimony of Murphy over Ekstrom in this case, on this occasion I conclude Murphy is mistaken. I note that Sidbeck admitted that Hutchinson called him before the layoff to advise him of the letter the Union intended to send to Respondent; I infer that Union knew that Sidbeck's layoff was imminent.

day. Sivek asked what would happen, and Ekstrom answered that "You guys know that I will not sign a contract. Rich knows that I will not sign a contract. And Rich Murphy told me that 'you guys won't get s— from the union.' The union won't let you know. You're not going to get anything from them." Ekstrom said that the employees had to make a decision whether to go to work for him or go to work for the Union and strike.[41]

On November 10, Hutchinson faxed Ekstrom a letter that stated in pertinent part Steve Sidbeck is a member and Union organizer for IBEW Local 701. It is our intention to organize Ekstrom Electric. Respondent received the fax transmission at 4:24 p.m. that day. That same day Sidbeck reported to work at a jobsite in Aurora. Ekstrom appeared at the site late that morning and told the employees to transfer to a jobsite located in Woodale for the remainder of the day. Near the end of the workday as the employees were cleaning there tools Ekstrom appeared at the Woodale site and discussed with them what work needed to be done. He told them that they were working against a deadline and that he wanted to get the work done so the employees worked late until 5:30 p.m. At that time Ekstrom told Sidbeck to appear at the same site the next day and gave him a list of things to do. That night Sidbeck received a telephone call at home from Hutchinson, who told him about the letter to Respondent notifying it that Sidbeck was working for Local 461 as a salt.

The next day Sidbeck went to the job and finished the work. He called Ekstrom when he had finished, as he had been instructed to do the day before. Sidbeck told Ekstrom that he had finished the work. Ekstrom asked Sidbeck where he was, and Sidbeck answered that he was at the Woodale site. Ekstrom said that he had talked to the builder of that site and the builder had said that there was no one at the site all morning. Sidbeck said that that could not be true because he was there and had finished the job. Ekstrom said that he was on his way to site to check it out. Sidbeck asked if there was another site that Ekstrom wanted to send him, to which Ekstrom replied that he did not have any more work for Sidbeck and he should call in the next morning. The next day Sidbeck called Ekstrom numerous times in the morning and finally reached him. Sidbeck asked where he was going to work that day. Ekstrom replied that he was sorry but he did not have any work for Sidbeck, that things were slow, and Sidbeck would have to call again tomorrow. The next day Sidbeck called again and spoke with Ekstrom who told him that he needed to know the hours that Sidbeck had worked so Sidbeck could be paid. Sidbeck assured Ekstrom that he would get the hours to Respondent right away. Sidbeck then went to Respondent's facility to give the paperwork containing the hours the he had worked. While there he asked Ekstrom if there was any work and Ekstrom again said that he was sorry but that things were slow and he did not have any work for Sidbeck. Ekstrom told him to call again at a later date. Thereafter, Hutchinson received a faxed letter from Respondent dated November 13 that stated in pertinent part, "This letter is being written to inform you that as of 11/11/97, Steve Sidbeck is no longer employed by Ekstrom Electric, Inc. due to lack of work."

Sidbeck called the next day all day long but never received a response. He did the same thing the next 2 days and finally received a call from Respondent's Ekstrom's wife, Laura, who helps run the business. She said that she was returning Sidbeck's call and that she had a check for him that he could pick up. Sidbeck went to the office that day and picked up his check. While at the facility Sidbeck introduced himself to Laura Ekstrom, who gave him his check. She asked whether Sidbeck was with Local 134 or Local 701. Sidbeck said that he was not a member of any union. Laura Ekstrom said that they thought he was with Local 134 or Local 701. Sidbeck explained that he had only worked for them on permit basis and that he was presently working with Local 701. During the conversation Laura said that Ekstrom would not sign a contract with the Union,[42] and Sidbeck commented that he did not believe that Ekstrom would sign a contract either. Around the first week of December Sidbeck spoke with Ekstrom by telephone. Sidbeck asked how things were going and if there was any work available. Ekstrom said that things were slow and that he did not have any work for Sidbeck at that time but that if Sidbeck needed something he should call Bob Hutchinson, that Ekstrom had talked with Hutchinson and Hutchinson had a job for Sidbeck. As indicated, Hutchinson was the organizer for Local 701.[43]

Ekstrom also testified that Respondent had completed some homes and that was strictly what Sidbeck had been working on and that was why he was laid off. He testified that Sidbeck completed the project that he had been working on and that Respondent did not do any more work for that builder.

Analysis

I have concluded above that during the interview of Sidbeck, Ekstrom asked if he had any union affiliation. This interrogation violates Section 8(a)(1). *American Signcrafters,* supra. Ekstrom also said that he was going to get rid of all his employees because they were not loyal to him. This threat of discharge also violates Section 8(a)(1). *Carry Co.,* 311 NLRB 1058 (1993). Later, on November 5 Ekstrom said that he would not sign a contract with the Union. This statement indicates to employees that their protected activity will be rendered futile by the unlawful conduct of Respondent, and it, thereby, violates Section 8(a)(1). *Woodline,* supra.

Concerning the statements made by Laura Ekstrom, Respondent had denied that she is an agent of Respondent. The record shows only that she is Ekstrom's wife and that she does certain office work for Respondent. The General Counsel in his brief does not address the issue of Laura Ekstrom's agency status. I conclude that the evidence is insufficient to show that Laura Ekstrom was an agent of Respondent. I shall, therefore, dismiss that allegation of the complaint.

Turning to the matter of Sidbeck's layoff, the facts show that on November 5 Respondent mentioned that Sidbeck might be laid off. On November 10 the Union notified Respondent that Sidbeck was a union supporter and the next day he was laid off. Because Respondent had indicated an intent to lay off Sidbeck before the November 10 letter was sent, this letter cannot be relied on as the triggering event of the layoff. Nonetheless, the evidence shows that quite apart from the November 10 letter, Sidbeck engaged in union activity and Respondent knew this. Specifically, Sidbeck joined his fellow employees in the 1-day strike. Moreover, Sidbeck's layoff occurred in the context of

[41] The General Counsel alleges that these statements are unlawful.

[42] The General Counsel alleges that this statement is unlawful.

[43] These facts are based on the testimony of Sidbeck, who I conclude is a credible witness. I have considered, but do not credited, Ekstrom's contrary testimony.

continuing pattern of hostility toward employees who supported the Union, as fully described above. These elements of union support, employer knowledge, antiunion animus, and timing demonstrate that the General Counsel has met his initial burden under *Wright Line* of showing that Sidbeck was unlawfully laid off on November 11.

Respondent contends that Sidbeck was laid off because the project he had been working on had been completed. I reject that contention, because even if that were the case, Respondent has failed to explain why Sidbeck was not transferred to another project consistent with what occurred in the past. Respondent contends in its brief that it was set up by the Union into making it appear that it discharged Sidbeck for his union activity by virtue of the November 19 letter. Assuming that is the case, as indicated above, I have discount the import of that letter in assessing the strength of the General Counsel's case. Finally, Respondent's contention of lack of work will be discussed below after the individual cases are described.

11. Nathan Dunaway

The General Counsel alleges that Respondent unlawfully terminated employee Nathan Dunaway on about December 17. Dunaway worked for Respondent from June 1996 to early December 1997. In March or April employee Finegan spoke to Dunaway about joining a union. Later, on about June 25, Dunaway had a conversation with Ekstrom's daughter. She asked Dunaway if he knew anything about a letter that Respondent had received from Local 117. The letter said that Dunaway was an organizer for that union.[44] After this letter was received Ekstrom began making comments to Dunaway such as asking if the job was "organized" or how his "little organizer" was doing.

During the election campaign, Dunaway signed an authorization card and attended union meetings. He served as the observer for the Union at the September 2 election. Dunaway also participated in the strike on October 15.

Around Thanksgiving Dunaway had a motorcycle accident and was off work for 2 weeks. In early December he called Ekstrom and told him that he was ready to return to work. Ekstrom told him to get a doctor's note and then call again. After Dunaway procured the doctor's note he again called Ekstrom, who told him to report to the shop the next day at 7 a.m. The next day Dunaway arrived at the shop no later than 7:30 a.m., but Ekstrom was not there. Dunaway waited about 10 minutes and then called Ekstrom and asked where he was. Ekstrom did not reply and instead asked Dunaway where he had been. Dunaway explained that he had been out plowing snow since it had snowed the night before, and that he had encountered some problems with the snow equipment. Ekstrom said that he was sick and tired of all of it, that he did not need Dunaway anymore, and that Dunaway was fired. Dunaway had been told to report to the shop before for assignments and he had been late before, but he had never been disciplined because he would arrive before Ekstrom did. Dunaway also had plowed snow before during his off-duty time, and Ekstrom knew this.

Dunaway denied that he ever made any mistakes concerning recording the time he worked on his timecards, or that he ever willingly falsified his timecard. He also denied that he ever was accused or disciplined by Ekstrom for doing so. Dunaway also denied that he ever failed to call in to work if he was unable to appear. Dunaway admitted that he and other employees completed their work on November 21 and then left early, but they indicated the early departure on their timecards.[45]

In support of its case Respondent presented the testimony of employee Zych. He testified that he worked at jobsite with Dunaway in November 1997. During this time period, according to Zych, Dunaway was appearing for work late and yet Dunaway was still writing down on his timecard that he had worked 8 hours. Zych knew this because he collected the timecards and delivered them to Respondent. Zych testified that he asked Dunaway about the matter and Dunaway replied "close enough." Zych further stated that sometimes Ekstrom would appear on the jobsite and Dunaway would not even be there, yet Dunaway would still indicate on his timecard that he worked 8 hours. Zych told Ekstrom that Dunaway was coming in late and wondered whether Dunaway had been picking up material. Later, in response to questions from me Zych testified that he told Ekstrom that Ekstrom may want to confront Dunaway with the fact that while Zych was getting to work everyday at 7 a.m., Dunaway was arriving late with an excuse but still writing down that he worked 8 hours on his timecard. Ekstrom's response was something like "okay I see." Zych testified that this conversation with Ekstrom occurred November 21, based on the fact he remembered that he left the jobsite early that day and records show that on November 21, employees left the jobsite early.

Ekstrom testified that Dunaway was on sick leave for a period of time as a result of a leg injury. Dunaway called Ekstrom the Friday before he was ready to return to work, and Ekstrom told him to report the following Monday with a doctor's release. Ekstrom testified that that Monday he waited at the shop for Dunaway until 7:30 or 7:45 a.m. but Dunaway never appeared. Later that morning Dunaway called Ekstrom from the shop and asked where he should report. Ekstrom asked why Dunaway was late and Dunaway replied that he had been out snowplowing the night before and he was just coming to work. Ekstrom then fired Dunaway. Ekstrom testified that he did not know that Dunaway was snowplowing on his own time.

Ekstrom also asserted that Dunaway had falsified his timecards. In support of this assertion Ekstrom explained that on a Friday, before the time that Dunaway had been off for sick leave, Ekstrom was told by Zych and Caddy that Dunaway was filling out inaccurate timecards to cover periods of time when he was not at the site. Dunaway's timecard for the week ending November 21, 1997, shows that for the Friday during that week Dunaway entered 7 hours worked but Ekstrom scratched out that number and wrote in 4 hours. The following Monday Ekstrom stated that he confronted Dunaway with this contention and Dunaway explained that it he must have made a mistake. It is clear, however, that Dunaway was not fired at that time.

Analysis

The facts show that Dunaway was a union supporter; indeed, he was the observer for the Union at the election a fact obviously known to Respondent. Ekstrom's references to Dunaway as a little organizer further establishes Respondent's knowledge of Dunaway's support for the Union. Again, Respondent's pattern of hostility toward the Union and its effort to get rid of

[44] This testimony was received without objection.

[45] These facts are based on the testimony of Dunaway, who I conclude is a credible witness.

the union supporters are apparent from the facts and conclusions set forth above. I conclude that the General Counsel has met its initial burden under *Wright Line* of showing that Dunaway was unlawfully fired.

Concerning Zych's testimony, I credit the testimony of Dunaway that in fact Dunaway was not late for work on the occasions or with the regularity claimed by Zych. I conclude that Zych's testimony in this regard is exaggerated, and he admitted that he did not know for certain that Dunaway's alleged late arrival at the worksite was due to tardiness as opposed to other work assignments that took Dunaway away from the site. I note that when Zych complained about this matter to Ekstrom, Ekstrom's reaction was nondescript. Indeed, according to Zych there were times when Dunaway was late on the jobsite and Ekstrom was there, yet there is no evidence that Ekstrom took any action or was even concerned. I infer under these circumstances that any late arrivals by Dunaway witnessed by Zych were either work related or excused. Nor do I credit Ekstrom's testimony that he confronted Dunaway with this matter and Dunaway admitted the error. I likewise do not credit Ekstrom's testimony that it was he who corrected the timecard for November 21. To the contrary, I have credited Dunaway's testimony that the timecard matter was never mentioned to him as a reason why he was terminated. In sum, I conclude that Respondent has not presented credible evidence to show that in fact Dunaway falsified his timecard or that it reasonably believed that he did.

Ekstrom also testified that he fired Dunaway when Dunaway appeared late to work on the day he returned from sick leave. Dunaway admitted arriving approximately one-half hour late that morning. However, Respondent has presented no policy or practice that it fires employees under these circumstances. Indeed, I have credited the testimony of Dunaway that he had done this in the past when he was told to report to Respondent's facility and he had not been disciplined. This seems to be a case where Respondent seized on the tardiness as a justification to cover another motive. I, therefore, conclude that Respondent has failed to establish that it would have terminated Dunaway even if he had not engaged in union activity. It follows that Dunaway's discharge on December 8 violated Section 8(a)(3) and (1).

12. Karbowski and Denes again

The General Counsel alleges that in December Respondent unlawfully transferred these employees from commercial worksites to residential worksites. By way of background, in November Denes asked Ekstrom when he would be getting a raise that he felt he was due. Ekstrom said that Denes would have to talk to Denes' buddy Murphy. This is in obvious reference to Richard Murphy, who is employed as the organizing coordinator for District 6 of the IBEW, which includes Local 461. Denes had two more similar conversations with Ekstrom about a raise and another one concerning vacations.[46] In early December Denes and employees Karbowski and White asked Ekstrom about the negotiations. They asked whether Ekstrom was going to sign the contract. Ekstrom answered that if "if you can't see this, then you must be a pretty naïve person." Ekstrom said that he was not going to sign the contract and that he did not want anyone else being part of the company.[47]

In December Ekstrom told Karbowski that he could not give out raises because his hands were tied due to negotiations and that Karbowski should talk to Murphy. Employees attended a Christmas party given by Respondent in 1997. After the party a group of employees went to a bar. The employees began to talk about the small amount of their Christmas bonuses. Ekstrom said that he could not give more than $50 to $100 because the Union would not let him.[48]

Since Denes and Karbowski started work with Respondent they performed primarily commercial and industrial work as opposed to residential work. They preferred doing commercial work; Denes described how residential work requires that employees work faster doing a lot of pipe work. Denes and Karbowski received some special training in performing commercial electrical work. On about January 2, 1998, Denes and Karbowski had a conversation with Ekstrom, who said that he did not have any more commercial work for them. He said that he would let Denes and Karbowski make up their own mind if they wanted to stay with Respondent, but he had only residential work left. Denes said that employee Bonta was still doing work on the Hair Cuttery projects, which was commercial work. Ekstrom replied that he no longer had the Hair Cuttery work. Ekstrom then said that he did not want to do any more commercial work because he was afraid of picket signs going up and he did not want to be affiliated with the Union at all.[49] The employees decided to continue to work for Respondent. However, thereafter Denes and Karbowski no longer performed commercial work but instead performed only residential work. Denes admitted in his pretrial affidavit that since that time Respondent's work has "mainly" been residential. At some unspecified time Karbowski asked Ekstrom whether another employee was still doing commercial work. Ekstrom answered that the employee was finishing up few jobs at the Hair Cuttery.

Employee Anthony Buono testified that he began working for Respondent around Christmas 1997 as an apprentice electrician. He spends 75 percent of his time performing commercial work and has performed that work at Hair Cuttery locations.

Employee James Bonta testified that he was hired by Respondent as an electrician in October and has spent about 90 percent of his time performing commercial work, including at the Hair Cuttery locations since January 1998. In December Bonta asked Ekstrom for a raise. Ekstrom replied that he had to wait until all of this blew over. Bonta understood this to refer to the union matters. In December Ekstrom told Bonta that by the first of the year he will have gotten rid of all the employees who had signed union cards. In January 1998 Ekstrom told Bonta that he was going through the motions with the Union and that he was looking forward to a decertification election September 1, that he had gotten rid of all the employees who had signed cards, and that if the vote went his way he no longer would be union. In mid-January 1998 Ekstrom told Bonta that he was going through the motions with the union and there was no way that he would sign a union contract. He said that he

[46] The General Counsel does not allege that these statements are unlawful.

[47] This conversation is based on the testimony of Denes. The General Counsel does not allege that it was unlawful.

[48] This statement is covered by an allegation in the complaint. These facts are based on the testimony of Bonta and Caddy, as generally corroborated by Karbowski.

[49] These statements are not specifically alleged in the complaint.

was giving the Union such farfetched proposals that they would never be accepted.[50]

On January 16, 1998, Ekstrom told Karbowski that his hands were tied concerning Karbowski's health insurance and raise and that Karbowski should talk to Murphy. Ekstrom also said that after negotiations he could work something out with the employees and that he would always be nonunion.[51] At some unspecified time before January 16, 1998, Karbowski and Ekstrom were talking about the negotiations. Ekstrom said that he just going through the motions until it ends in a year.[52]

In mid to later January 1998, Denes and Karbowski had another conversation with Ekstrom concerning the happenings with the Union. During the conversation Ekstrom said that he was not going sign a union contract and that he waiting for the union negotiations to blow over.[53] Ekstrom also said that the employees were killing him on the residential work that they were performing. By that Ekstrom meant that the employees were not working fast enough to get the work done on time. He offered to lay them off. Although the employees were not laid off at that time, they were laid off shortly thereafter.[54]

Ekstrom testified that he interviewed Denes for employment in around November 1996 and that during that interview he told Denes that Respondent was a nonunion company and had its own health insurance, dental, and vacation plans. Ekstrom also told Denes during the interview that in years past Respondent had given out some large bonuses to employees according to the jobs that they had done and according to the amount of work that they had done. Ekstrom testified that at the December 3 bargaining session, more described below, the matter of bonuses was discussed. According to Ekstrom, Murphy said that as long as the bonuses did not exceed $100 he did not have a problem with it. This meeting is described more fully below.

Ekstrom testified that he also interviewed Karbowski in about June 1997 and told him essentially the same thing concerning Respondent's benefits that he told Denes. Ekstrom testified that in late January 1998 Karbowski was doing residential work and Karbowski liked the work. Ekstrom denied that he ever told Karbowski that he was waiting for the union negotiations to blow over and then if the Union did not work out, Respondent would take Karbowski back. Ekstrom explained that he really did not want to lose Karbowski and Denes since they were his key workers.

Ekstrom admitted that he transferred Denes and Karbowski from commercial work to residential work. He testified that the reason he did so was because he did not have any commercial work at the time. He testified that the Razny Jeweler's job was completed in the week ending November 22, 1997. However, a summary of records offered by Respondent shows that other commercial work continued after that time at sites such as the Red Roof Inn and the Hair Cutteries. Ekstrom testified that Denes did do residential work in the past in November 1996 during a time when there was no commercial work to do.

Analysis

The facts show that Respondent gave what employees perceived to be a small Christmas bonus in 1997. Ekstrom blamed this on the Union. He claimed that the Union had told him to limit the monetary amount for the bonus to employees at bargaining session. I do not credit that rather incredible testimony; instead, I credit the testimony of Murphy concerning what occurred at that bargaining session. It follows that Respondent's falsely blaming the Union for the size of the bonus was nothing more than an attempt to undermine the Union's support. This violates Section 8(a)(1). *Atlantic Forest Products,* 282 NLRB 855 (1987); *Truss-Span Co.,* 236 NLRB 50 (1978). Also as described, above, Ekstrom told Bonta that he could no get a raise until the union matter blew over. By conditioning a raise for employees on the cessation of union activity, Respondent violated Section 8(a)(1). Ekstrom also stated that by the first of the year, Respondent will have gotten rid of all the employees who had signed cards for the Union. This threat to discharge union supporters violates Section 8(a)(1). *Carry Cos.,* supra. Ekstrom told an employee that he was going through he motions with the Union and looked forward to the decertification. This statement that Respondent was rendering the employees union activities futile by its unlawful conduct violates Section 8(a)(1). *Woodline,* supra. During that same conversation, Ekstrom said that he had gotten rid of all the employees who had signed cards for the Union. This statement also violates Section 8(a)(1). *Carry Cos.,* supra. Later, Ekstrom again said that he was going through the motions with the Union and that he was giving the union proposals that it would never agree to. This expression of futility violates Section 8(a)(1). *Woodline,* supra.

Turning to the matter of the transfer of employees Denes and Karbowski from commercial work to residential work, I conclude that these employees regarded commercial work as preferable. Moreover, Ekstrom admitted that he regarded Denes and Karbowski as among his best employees. The evidence shows that both employees supported the Union, and Respondent knew or suspected this from the election results and the strike, among other things. The evidence concerning Respondent's antiunion animus continues to grow. Indeed. Ekstrom had threatened to get rid of all the employees who had supported the Union, and then later bragged that he had done so. This evidence is sufficient to show that the General Counsel has met its initial burden under *Wright Line* by showing that the transfer of Denes and Karbowski from commercial work to residential work was unlawful.

Ekstrom contends that these employees were transferred because there was no more commercial work to be done. I do not believe this testimony. Instead, I credit the testimony of the employees described above that Respondent continued to perform commercial work. Indeed, Respondent's own records are not to the contrary. The records show at most that there was a reduction in the amount of commercial work to be done that might have a justified a reduction in the amount of commercial work done by Denes and Karbowski. It does not explain the

[50] These statements are covered by allegations in the complaint.

[51] None of these statements are specifically alleged to be unlawful in the complaint.

[52] This last statement is also not specifically alleged in the complaint. The facts in this paragraph are based on the testimony of Karbowski, who I conclude is a credible witness.

[53] This statement is not alleged to be unlawful in the complaint.

[54] The complaint initially alleged that the layoffs of Denes and Karbowski were unlawful. However, at the hearing the General Counsel withdrew that allegation of the complaint. The facts set forth above are based on the testimony of Denes and Karbowski, who I conclude are credible witnesses concerning these events. Respondent, in its brief, argues that I should not credit the testimony of Denes because it was contradicted by the testimony of Carl Guse, who Respondent describes as an unbiased former entrepreneur. As between Guse and Denes, based on my observation of the demeanor of the witnesses, I conclude that the testimony of Denes is the more credible.

complete reassignment. I infer that this was an effort by Respondent to rid itself of union supporters by making working conditions for them increasingly unpleasant. I conclude that by reassigning employees Denes and Karkbowski from commercial to residential work, Respondent violated Section 8(a)(3) and (1).

13. Promise of apprentice school

The General Counsel asserts that on January 18, 1998, Ekstrom promised an employee that he would be sent to apprentice school if he no longer supported the Union. The General Counsel does not address this allegation at all in his brief. My review of the lengthy record in this case reveals that the only testimony that might shed light of the allegation was elicited by Respondent. Ekstrom testified that at some point during the second or third week in December, after negotiations had broken down, he was approached by employee White who asked if a contract was not signed with the Union was there some type of alternative situation that would permit him to attend school. Ekstrom stated that he replied that he had heard that another organization had an apprenticeship school and if negotiations broke down and they could not reach a contract with the Union, White might be able to attend that school. White testified that Ekstrom told him that if negotiations were completed, attending apprentice school would probably be an option for him, but that this conversation occurred in January 1998. I conclude that neither of these statements can reasonably be interpreted as violating the Act. I shall dismiss this allegation of the complaint.

14. Richard Caddy

The General Counsel alleges that Respondent unlawfully laid off and/or terminated employee Richard Caddy on about January 16, 1998. Caddy worked as an electrician for Respondent on two occasions, the most recent being from May 1997 to mid-January 1998. Ekstrom hired Caddy and during his interview in May 1997 Ekstrom told him that Respondent always had work and that there never was a time when Respondent did not have work. While employed by Respondent, Caddy attended union meetings and signed an authorization card. On September 2, the day of the election, about 3-1/2 hours after the election, Caddy had a conversation with Ekstrom. Ekstrom asked Caddy how the Union got to him; Caddy replied that he did not know what Ekstrom was talking about. Ekstrom said that he did not believe Caddy and that he knew how Caddy had voted. Caddy answered that he nobody gets to him and that he did what was best for himself and that his vote was a matter of personal choice. Caddy also participated in the 1-day strike against Respondent.

Shortly after January 1, 1998, Caddy asked Ekstrom for a raise that Caddy felt he had been promised. Ekstrom replied that Caddy would not receive a raise, because Murphy, Local 461's representative had told him and written a letter to him stating that he was not allowed to give raises.[55]

At the bargaining session held on January 14, 1998, Respondent advised the Union by letter that it intended to lay off Caddy and employee Dale Jurgensen. Ekstrom asserted at that time that Caddy had been caught sleeping in a van and Jurgensen was not a very good electrician. Murphy then advised Caddy of his impending layoff. On about January 16, 1998, Caddy wore a union hat to work and also posted a union sticker in the house that he was working on that day. That same day Ekstrom came to site and asked White who was in charge of that jobsite. White replied that he guessed that he was. Ekstrom said that it was time to lay somebody off and that Caddy should be that person. White said that he was not going to do it because he did not want unfair labor practice charges against him. Ekstrom said that he would give White a raise if White fired Caddy. White again said, "no"; he believed that Ekstrom was just joking about the raise since Union Agent Murphy already had told him that he was going to get a raise. Caddy then walked in and Ekstrom told Caddy that it was time to lay him off because there was a lack of work. Caddy asked if employees Denes and Karbowski were still working and Ekstrom said, "yes." While this conversation took place there was a union sticker on the wall in the kitchen they were talking. Ekstrom took down the sticker and said, "We don't advertise propaganda in my f— house."[56]

The evidence shows that employees Anthony Buono, Jim Banta, Dale Jurgensen, Mike Wallace, and Joe, all of whom performed electrical work, had less seniority than Caddy but were not laid off before Caddy. Also, at the time Caddy was laid off there was enough work remaining on the project for three employees for 2 days.[57]

Respondent asserts that Caddy was laid off for lack of work. It points to the January 14, 1998 letter that it sent to the Union concerning this matter, and that it raised this matter at negotiations with the Union and no objections were raised. Ekstrom further testified that when Caddy was laid off he was working at a Red Roof Inn site installing parking light electrical fixtures. He explained that although employee Bonta had less seniority than Caddy, Bonta was working on a Hair Cutteries project that installing electrical fixtures and outlets inside of a facility that was being remodeled by a tenant. Ekstrom testified that Bonta had 10 years' experience and that Caddy had no knowledge of how to perform that type of work. Here again I do not credit Ekstrom's explanation. I find it incredible that Respondent would hire someone as a journeyman electrician, pay him at that rate, and then claim that the employee had no knowledge of how to install light fixtures or outlets.

Analysis

In assessing the legality of Caddy's layoff, I do not consider the evidence of Caddy's union activity on the day of his discharge. That activity occurred after he had been notified by the Union that he was going to be laid off. It seems designed to buttress a case of unlawful discharge and thus does not support the General Counsel's case. However, other evidence shows that Caddy was a union supporter and Respondent knew this. Indeed, shortly after the election Ekstrom disclosed that he knew how Caddy voted and wanted to know how the Union got to him. Ekstrom had threatened to get rid of all the union supporters, and Caddy's layoff appears to be a logical step in that

[55] Neither the statement nor the alleged failure to give the raise are specifically alleged in the complaint.

[56] The General Counsel does not allege that these statements are unlawful, nor does the General Counsel argue that the removal of the sticker was unlawful. Ekstrom admitted that he removed a union sticker from the wall of the house that they were working on; he contends that he said only that he told the employees that they could not have stuff like this in private homeowners' houses.

[57] The facts set forth above are based on the testimony of Caddy, who I conclude is a credible witness, as well as the testimony of White, who I conclude testified truthfully concerning these matters.

process. Considering the strength of the antiunion animus that I have described above, I conclude that the evidence shows that the General Counsel has made his initial showing under *Wright Line* Caddy was unlawfully laid off.

At the January 14, 1998 bargaining session, Ekstrom asserted that Caddy had been caught sleeping in a van. At the hearing, however, Respondent presented no evidence to support this contention. This shifting explanation again served to undermine Respondent's case. I also reject Respondent's contention that Caddy was selected for layoff because the project that he had been working on had been completed. As with the other alleged discriminatees, this does not explain why Respondent failed to send Caddy on to other sites. Even assuming that there was a lack of work, I do not accept Ekstrom's rather incredible explanation as to why he laid off Caddy instead of newly hired employees such as Bonta. Respondent's general lack of work argument will be addressed below with the other layoffs.

15. Dale Jurgensen

The General Counsel alleges that Respondent unlawfully reduced the wages of employee Dale Jurgensen on about December 10, unlawfully reduced his overtime opportunities on about December 22, and unlawfully laid off and/or terminated him on about January 16, 1998. Jurgensen worked for Respondent as an electrician from October 1997 to January 1998. Ekstrom interviewed him on October 1. During the interview Ekstrom asked Jurgensen how he felt about unions. Jurgensen answered that he did not care for them.[58] In November, while at a jobsite, Jurgensen obtained an authorization card from Murphy and signed it. Jurgensen also talked to other employees about the Union while at work.

On about December 1 Jurgensen's hourly wage rate was reduced from $20 to $15 per hour. On about December 15 Jurgensen asked Ekstrom if he had made a mistake on his check because his rate had been reduced. Ekstrom responded that there had not been a mistake and that Jurgensen's rate had been lowered to $15. He said that he was losing money and needed to do it and that Jurgensen was not working fast enough. Jurgensen asked for his paycheck and they went to Ekstrom's truck where Ekstrom had the check. While there Ekstrom asked if any union people had been around and Jurgensen said no. Ekstrom then asked if Jurgensen had signed a union card and Jurgensen said that he had.[59]

Sometime before Christmas while at a jobsite in North Aurora Jurgensen heard Ekstrom ask employee Jim Bonta if a union person had been around. Bonta answered, "yeah." Ekstrom asked if Bonta had signed a card and Bonta answered that he had not despite the fact that Bonta had signed a card.[60]

Ekstrom testified that during the December 3 bargaining session, more fully described below, Murphy complained that Jurgensen's pay had been cut. Ekstrom testified that he answered that he had an agreement with Jurgensen that after 30 days Jurgensen's performance would be reviewed because Ekstrom was uncertain whether Jurgensen could do the job for the $20 per hour that Respondent was paying him. Ekstrom claimed that this was a practice of his. He explained to Murphy that he felt that Jurgensen could not do the job; that he had a very difficult time reading blueprints and was colorblind.[61] Ekstrom claimed that he had a conversation with Jurgensen and told him either he accept a $5 per-hour cut in pay or be laid off, and Jurgensen opted for the cut in pay. Ekstrom admitted that he never gave the Union notice of his intent to offer Jurgensen this option.

Jurgensen testified that he had been working an average of about 5 to 6 hours a week overtime. Time records for the period November 13 to January 7, 1998, show that Jurgensen worked 5 hours overtime for the week dated November 20, 5 hours for the week dated November 26, 11.5 hours for the week dated December 10, and 2.5 hours for the week dated December 17. Jurgensen testified that he had a conversation with Ekstrom when he was reporting his hours. He reported that he had worked 42.5 hours and Ekstrom asked where he had gotten the 2.5 hours. Jurgensen explained that there was work that had to be done for the contractor and that he had no choice but to work the overtime. Ekstrom told him not to work overtime. Jurgensen asked why and Ekstrom said that during that time of year they did not want to do any overtime. Jurgensen denied that after he had worked the 11.5 hours overtime he was told by Ekstrom not to work overtime without permission.

Employee Zych testified that he began working for Respondent as an apprentice electrician around Christmas, 1997. Since that time he has worked about 2 to 4 hours of overtime per month. He stated that permission is not needed to work that overtime; if the employee needs to stay late to complete a project overtime is paid. Zych testified that it is permissible to work an hour or so to complete a project, but that Ekstrom must grant overtime on a Saturday on a project by project basis. Ekstrom testified that he spoke with Jurgensen in response to an occasion when Jurgensen worked a Saturday without permission. He states that he told Jurgensen that he could not work on Saturdays and do whatever and whenever he wanted. According to Ekstrom, Jurgensen said, "All right, I understand." Ekstrom also says that he told Jurgensen that if he needed to work an hour to finish a job, that was fine, but nobody was working Saturdays and things were getting slow.

On Jurgensen's last day of employment with Respondent he was told by another employee that Ekstrom wanted him to call. That night after work Jurgensen called Ekstrom and was told that he was laid off. Ekstrom gave no reason nor did Jurgensen ask for a reason. Jurgensen admitted that near the time he was terminated employee White worked with him on a project and White had to redo much of the work that he had done. Jurgensen's explanation was that White did not understand his method of piping just as he sometimes does not understand the method used by other electricians. Jurgensen denied that employee Sivek was also correcting his work. Jurgensen also denied that he was colorblind; at the hearing he showed that he was able to select wires by color. He also denied that he ever told employee White that he was colorblind. Jurgensen also complained that his productivity was impaired due to the fact that Ekstrom had supplied him with a defective generator.

White testified concerning errors that he felt Jurgensen committed while working on one house in about December, 1997 and another house about 2 weeks later. He told Ekstrom about the errors Jurgensen made in the first house, Ekstrom

[58] The General Counsel alleges that this questioning is unlawful.

[59] The General Counsel does not allege that this questioning is unlawful.

[60] The General Counsel does allege that this questioning is unlawful. These facts are based on the testimony of Bonta as generally corroborated by Jurgensen.

[61] The ability to recognize colors is essential in connecting wires.

talked to Jurgensen about the matter, who apparently admitted the error and promised to do better in the future. White also reported the error at the second house to Ekstrom, but White did not recall Ekstrom's response.

Analysis

The questioning of Jurgensen's union sentiments during his employment interview by Ekstrom violated Section 8(a)(1). *American Signcrafters,* supra. Likewise, the questioning of Bonta concerning whether he had signed a union card, under the totality of circumstances, violated Section 8(a)(1). *Sunnyvale,* supra.

As indicated, Jurgensen's wage rate was reduced from $20 to $15 per hour. By that time Jurgensen had signed a card for the Union. When Jurgensen asked Ekstrom about the reduction, one of the reasons he was given was that Respondent was losing money. There is no evidence in the record to support that assertion. Another reason given was that Jurgensen was colorblind. When I asked Ekstrom at the hearing why he would retain a colorblind electrician and at the same time complain about the matter, Ekstrom answered that he assigned Jurgensen to work that just involved bending conduits. Ekstrom said that his information concerning Jurgensen's color blindness came from two other employees. I set forth this testimony in detail here to give an example of why I have decided not to credit Ekstrom's testimony. First, I conclude that Jurgensen is not colorblind, as he amply demonstrated in the hearing. If Ekstrom was genuinely concerned about Jurgensen's ability in this regard, he could just as easily tested it and he would have discovered that his concerns were unjustified. Yet Ekstrom would have one believe that the absence of the ability to recognize colors would lead him to merely reduce the pay of an electrician. Ekstrom also asserted that Jurgensen could not read blueprints and that was a reason why his pay was cut. I discredit that assertion; it is unsupported by any credible evidence. Ekstrom asserted that he had an arrangement with Jurgensen that Jurgensen's performance would be reviewed to see if he deserved the $20 per hour. I do not credit that testimony either. I infer from the shifting and rather incredible reasons given for cutting Jurgensen's pay, that the real reason was an unlawful one. That unlawful reason was that Jurgensen had signed a card for the Union. Indeed, on the very occasion that Jurgensen asked why his pay had been cut, Ekstrom confirmed his apparent belief that Jurgensen had in fact signed a union card. Furthermore, a pattern has developed, as described above, where Respondent worsened working conditions of employees in an effort to undermine their support for the Union and get rid of the union supporters. I conclude that evidence shows that the General Counsel has established that reduction of Jurgensen's rate of pay violated Section 8(a)(3) and (1).

Turning to the reduction of overtime, records show that Jurgensen had worked overtime with some degree of regularity. I credit Jurgensen's testimony that he was told that he no longer could work any overtime; I discredit Ekstrom's explanation. Thus, contrary to practice, Jurgensen was precluded from working all overtime. By this time Jurgensen had had his pay rate unlawfully reduced, Ekstrom had confirmed his belief that Jurgensen had signed a card to support the Union. These facts show a continuing pattern of unlawful conduct, and I conclude by precluding Jurgensen from working overtime, Respondent violated Section 8(a)(3) and (1).

Finally, turning to Jurgensen's layoff, the same facts described above are sufficient to show that the General Counsel has met his initial burden under *Wright Line* Jurgensen's layoff was unlawful. Respondent arguments that Jurgensen was selected for layoff because he colorblind has already been rejected. Nor is their any evidence to support the contention that Jurgensen was unable to read blueprints. Turning to the argument that Jurgensen was selected for layoff because he made mistakes at work, Jurgensen admitted that his work had too be redone. However, this fact alone is insufficient to meet Respondent's burden, since it must show not only that the alleged discriminatee made a mistake, but that it would have selected the alleged discriminatee for layoff because of that reason even in the absence of union activity. Respondent had failed to do so.

16. Peter Sivek

The General Counsel alleges that Respondent unlawfully discharged employee Peter Sivek on about February 6, 1998. Sivek worked for Respondent from April 1996 until February 1998. Sivek signed a union card and attended union meetings before the election. The Friday before the election on September 2, Ekstrom told employee White that he thought six employees were going to vote for him without knowing how White or Sivek were going to vote.[62] As indicated, the election results ultimately showed that all but one employee voted for the Union. Sivek joined the 1-day strike described above. In November Sivek and Ekstrom had a conversation about the union negotiations. During that conversation Sivek asked if Ekstrom was going to sign a union contract and Ekstrom said that he was not going to.[63] In December Sivek began wearing a union shirt and cap to work. In the beginning of January 1998, Ekstrom told White that he was going to kick Sivek's "ass" because Sivek was wearing a union T-shirt that day.[64] A few days later Ekstrom asked White whether Sivek had changed his attitude. White understood this to mean whether Sivek continues to wear a union T-shirt. White answered that Sivek had not.[65] Ekstrom told employee White more than once that he was going through the motions with the union negotiations and that he would not sign a union contract. Ekstrom specifically told this to White on January 21, 1998, the day White gave an affidavit to the Board.[66]

About 2 weeks before Sivek's termination he received a $2 per hour raise from Ekstrom. On January 26, 1998, while at a jobsite, Ekstrom asked Bonta if Sivek had been at the job and if

[62] These facts are based on the affidavit given by White. I conclude that the statement contained in the affidavit is credible and that White's attempt at the hearing to detract from the statement is not. The General Counsel does not allege that this statement is unlawful.

[63] This statement is not specifically alleged in the complaint.

[64] I do not credit White's testimony that Ekstrom was joking when he made this remark. Nor do I credit Ekstrom's testimony that what he actually said was that someone needs to kick Sivek in the "ass" to getting him moving, explaining that he was very unhappy with Sivek's "attitude" and the amount of work that he was producing after the election. The General Counsel alleges that this statement was unlawful.

[65] These facts are based on the testimony and pretrial affidavit of White. The General Counsel does not allege that this statement is unlawful.

[66] These facts are again based on White's pretrial affidavit, for reasons previously indicated. I again do not credit White's unconvincing attempt at the hearing to change the facts. The General Counsel does not allege that these statements independently violated the Act.

he was on time and was doing his job. Bonta answered, "yes." Ekstrom then asked if Hutchinson had been at the site, because if so that meant that Sivek had called Hutchinson and told him where the site was located. Later that same day there was a discussion concerning a union bumper sticker that Hutchinson had put on one of Respondent's trucks. The bumper sticker was red and white and read Proud to be Union; it also had the Local union symbol. Ekstrom ripped the sticker from the truck and asked Bonta who put the sticker on the truck. Bonta replied that he did not know. Then Ekstrom asked Bonta if Sivek had put the bumper sticker on the truck, and Bonta answered, "no." A photograph of the truck taken around that time shows that a sticker advertising for Klein Tools appears near the union bumper sticker.[67] In early February Ekstrom told employee Buono on two occasions that Sivek's time was coming short and that Sivek was on thin ice. Buono understood this to refer to the fact that Sivek was always wearing union paraphernalia such as cap or T-shirt to work and had a union sticker displayed in his car at all times that he was on the job.[68]

On February 6, 1998, at about 2 p.m., Hutchinson visited the worksite known as Stonebribge where Sivek, among other employees, was working. Sivek was again wearing a union cap and T-shirt. Ekstrom was also working on the site at that time. While Hutchinson was in front of the site employee Matt White walked out of the house where the employees were working; White was bringing material and tools from the site to Ekstrom's truck. White shook Hutchinson's hand and said that he and Ekstrom were going to be leaving soon to go to another work location, and that Ekstrom was not happy that Hutchinson was sitting in front of the site.[69] White went back into the house. A few minutes later Sivek came out of the house and approached Hutchinson's car, where they conversed for about 3 or 4 minutes. During the course of that conversation, Ekstrom twice stuck his head out of the door and shouted that Sivek should go back in the house. Sivek turned around and replied that he would. After about 30 more seconds, Sivek returned to work. Sivek then apologized to Ekstrom and later told him that he would work 5 minutes later to make up for the time he spent talking with Hutchinson. Later that day Ekstrom handed Sivek his paychecks and told him that he was fired. Sivek denied that he told Ekstrom to go mind his own business when he was told to return to work that day.[70]

Ekstrom testified that it was necessary to get the work done that Friday afternoon because it was going to be inspected that afternoon. At between 1:30 and 2 p.m. Hutchinson arrived at the site Sivek approached Hutchinson and started talking to him. Ekstrom waited 2 or 3 minutes and then stuck his head out the front door and told Sivek to come back to work, the house had to be done. Sivek told him to mind his own business. Ekstrom waited another minute or two and again told Sivek to get back to work. Sivek replied that he was on personal business. After another 5 to 10 minutes later Sivek came back to work. Later that day Ekstrom left the site and called his office and had Sivek's paycheck prepared. Ekstrom returned to the site at which time Sivek told Ekstrom that he was going to work an extra 5 minutes to make up for the time he was talking to Hutchinson. Ekstrom told him not to bother, that he was fired. Ekstrom stated that he never had an employee talk back to him in that manner before. I do not credit this testimony to the extent that it is inconsistent with that of Sivek's, as described above.

Respondent also presented the testimony of employee Zachary Zych, who testified that after the election he worked at a jobsite with Sivek. Zych testified that Sivek was standing around for about 10 to 15 minutes and that Zych asked for help but Sivek refused. It is difficult to gather what Respondent was attempting to prove by this evidence, since Ekstrom himself contends that Sivek was fired due to the events described in the preceding paragraphs and made no mention, either to Sivek at the time of his discharge or at the hearing, that the incident described by Zych played any part in Sivek's discharge.

Continuing with the facts even after the discharge of the last alleged discriminatee, at some unspecified time after February 6, 1998, Ekstrom asked employee Anthony Buono if the Hutchinson had called Buono's house. Buono said, "no." Ekstrom said that Buono could talk to Hutchinson if he wanted but he did not have to. On another occasion Ekstrom again asked Buono if Hutchinson had called. Buono answered that he had not talked to Hutchinson.[71]

Analysis

As stated above, Ekstrom threatened to kick Sivek's "ass," because he was wearing a union T-shirt at work. This threat of bodily harm violates Section 8(a)(1). *Genesee Family Restaurant,* supra.

Turning to the matter of the discharge, the evidence shows that Sivek was a supporter of the Union, and Respondent knew this. Respondent was hostile toward that activity, as witnesses by the increasing list on unfair labor practices that it has committed. Sivek himself was the direct target of unlawful conduct. This evidence is sufficient to show that the General Counsel has met his initial burden under *Wright Line.*

[67] The removal of the bumper sticker is not alleged to be unlawful. These facts are based on a composite of the testimony of Bonta, Buono and Sivek, which I credit. Ekstrom did not deny this testimony. Instead, he testified that Respondent did not allow any bumper stickers on its vehicles, and that the only thing displayed on the vehicles, other than Respondent's own name, was a partial decal that had not been completely scraped off. As indicated above, the photographic evidence, offered after Ekstrom's testimony, contradicts that testimony.

[68] These facts are based on the credible testimony of Buono.

[69] This conversation was not received into evidence for the truth of the matter asserted therein; it is hearsay to that extent.

[70] These facts are based on the testimony of Sivek, and to the extent not inconsistent with Sivek's testimony's, the testimony of Hutchinson. I conclude that Sivek was a credible witness and that Hutchinson, although less credible than Sivek, was nonetheless more credible than the witnesses presented by Respondent. I note that Buono's testimony also corroborated Sivek's concerning the length of time Sivek spoke with Hutchinson. I have considered Bean's testimony that Sivek's conversation with Hutchinson may have lasted 15 to 20 minutes; I conclude that this is an exaggeration; Bean himself later answered in response to my questions that the conversation lasted "maybe five, ten minutes." His testimony appears tilted. I have also considered the testimony of White on this matter; for reasons explained elsewhere in this decision I do not find him to be a credible witness.

[71] Neither of these conversations is alleged to be unlawful in the complaint. These conversations are based on the testimony of Buono. I note that Respondent currently employs Buono. I further note that Buono testified under subpoena from the General Counsel even after he had a conversation with Ekstrom about whether he had been subpoenaed and during which Ekstrom made reference to Buono's job and continued employment with Respondent. Finally, Buono is not alleged to be a discriminatee and otherwise has little apparent motive to fabricate his testimony. Also considering demeanor, I conclude that Buono is a credible witness.

Respondent contends that Sivek was discharged, because he was defiant when he was instructed to return to work after talking with Hutchinson during working time. Although I have not credited Ekstrom's version of the events of that day, the facts do show that Sivek engaged in a more than momentary conversation with Hutchinson during working time. Since working time is work, Sivek had no legal right under the Act to do so. I also consider the fact that Sivek did not immediately return to work when instructed to do so but continued to talk to Hutchinson for a short period of time, thereby displaying a defiant attitude toward the instructions from his employer. In sum, Respondent presents a substantial case in support of its argument that Sivek would have been fired even absent his union activity.

However, I conclude that Ekstrom was more concerned with *who* Sivek was speaking to rather than the several minutes taken from working time. I also consider the fact that Sivek immediately apologized to Ekstrom for his conduct and offered to work the time he had spent talking to Hutchinson. I note that there is no evidence that Sivek had engaged in a pattern of this type of conduct. Respondent cites *American Automatic Sprinkler,* 323 NLRB 920 (1997), as support for its argument that Sivek was lawfully terminated. However, that case is factually distinguishable. There the Board concluded that the alleged discriminatee had left work early under circumstances that showed a defiant insistence on doing so. Here, Sivek stopped working for only several minutes, and promptly apologized to Ekstrom for his conduct and offered to work later to make up the time. This hardly amounts to defiant insistence. Under these circumstances I conclude that Respondent has not shown that it would have discharged Sivek even absent his union activity. Respondent therefore violated Section 8(a)(3) and (1) by discharging Sivek.

17. Lack of work

Respondent contends that Sutter, Hartman, Sidbeck, Caddy, and Jurgensen were laid off due to a lack of work. Concerning Respondent's hiring pattern around the time of the layoffs, employee Jim Bonta was hired as an electrician at some unspecified time in October 1997; he responded to a help wanted advertisement in a local newspaper. Ekstrom explained that when he hired Bonta Respondent was just starting to get into its busiest time of the year and it had a lot of jobs going on and needed manpower. Particularly Razny Jeweler's wanted to open up before Thanksgiving. Anthony Buono was hired as an apprentice electrician around Christmas. In about January 1998 and again in early March 1998 Ekstrom asked employee Bonta if he knew anyone that needed work. Bonta said, "no."

Ekstrom admitted that during the period August and September 1997, Respondent employed about 10 or 11 electricians. Near the end of October Respondent hired three employees; Bonta, Wallace, and Zimba. According to Bonta, when he was hired in October, Respondent employed about nine electricians. In early December 1997 Respondent hired employee Buono. At that time Ekstrom did not recall from layoff any of the employees that had been recently laid off.[72] At the time Bonta testified on April 2, 1998, Respondent employed only three electricians. On May 26, 1998, Respondent hired another electrician. None of the laid off employees have been recalled.

[72] I do not credit Ekstrom's testimony that the reason he failed to do so was because he had heard that the laid-off employees had found other work.

Ekstrom also testified that employee Buono was hired as a favor to Buono's cousin, Bonta. Ekstrom explained that Bonta said that Buono was out of a job, and he really wanted to become an electrician. Ekstrom agreed to hire Buono at the rate of $8 per hour. Ekstrom never interviewed Buono. He testified that Buono works as a trainee for laborer doing whatever work needs to be done. Ekstrom also explained that Chaz Glazer is a high school student who works part time for Respondent after school about 3 hours per day. Glazer makes deliveries and works with the other employees so he can learn the trade. I do not credit this testimony. Instead, I credit the testimony of Buono that he works as an electrician.

Ekstrom explained the relationship between Respondent and the Hair Cutteries projects. Respondent has a contract to do work at those sites with a firm named Affinity. Hair Cutteries notifies Affinity when they obtain a lease and then Affinity schedules the trades to make the improvements on the space leased by Hair Cutteries. Respondent usually gets about 2 or 3 days' notice.

A summary of records shows the following:

HOURS WORKED	***WEEK ENDING***
367	8/2/97
267	8/9/97
319	8/16/97
358	8/23/97
355	8/30/97
308	9/6/97
353	9/13/97
322	9/20/97
446	9/27/97
356	10/3/97
343	10/11/97
266	10/17/97
551	10/26/97
762	11/1/97
462	11/8/97
469	11/15/97
385	11/22/97
393	11/29/97
396	12/6/97
473	12/14/97
420	12/20/97
166	12/26/97
229	1/3/98
77	1/10/98
319	1/16/98
320	1/23/98
251	1/30/98

Analysis

Respondent's argument of lack of work does not withstand scrutiny. During the very period of time that it was laying off the alleged discriminatees, it was hiring new employees. This is inconsistent with the argument that it had no work for employees to perform. Moreover, an examination of the summaries relied on by Respondent do not support its contention. They show that the hours worked by employees before the time the alleged discriminatees were laid off are approximately the hours worked after the layoffs. The exception to this occurred around the holidays, for a low point, and during the Razny Jeweler was busy time, for a high point. These summaries are also important for what they do not show. For example, there is no

breakdown of how many of the hours worked were overtime hours. Overtime hours can be reduced without the need of any layoff.

Also important is the fact that, as set forth above, Respondent had assured the employees that in the absence of a union they had been able to work year round. There is no explanation in the record as to why that was not possible after the employees had selected the Union. Notable by their absence are any records to show that in the past Respondent engaged in the number of layoffs at the times it did here after the employees selected the Union. Nor is their any credible explanation as to why Respondent continued to hire new employees instead of recalling its own experienced employees from layoff.

Under these circumstances, I conclude that Respondent has failed to show that it would have laid off Sutter, Hartman, Sidbeck, Caddy, and Jurgensen even if they had not supported the Union. Having already determined above that the General Counsel has met his initial burden of showing that these employees were unlawfully laid, it follows that Respondent violated Section 8(a)(3) and (1) by laying off Sutter, Hartman, Sidbeck, Caddy, and Jurgensen. During the compliance stage of this case Respondent will be given the opportunity to show that it would have lawfully laid off these employees at some point after their unlawful layoff.

C. *The 8(a)(5) Allegations*

The General Counsel alleges that Respondent violated Section 8(a)(5) in several respects. First, Respondent is alleged to have unlawfully refused to provide relevant information to the Union, and unlawfully delayed in providing such information to the Union. Next, Respondent is charged with making unilateral changes in terms and conditions of employment, including specifically laying off employees, reducing the wages of employees, withdrawing the use of company vehicles for employees, reducing the overtime opportunities for an employee, and transferring employees from commercial worksites to residential worksites. As described above, this same conduct is alleged to be violative of Section 8(a)(3). Finally, Respondent is alleged to have refused to bargain in good faith.

As indicated above, the Union was certified as the collective-bargaining representative of the employees on September 17. The parties thereafter met on five occasions to discuss a contract. The first meeting was November 5.[73] Present for the Union were Murphy and Gerry Branson, business manager for Local 461. Present for Respondent were Ekstrom and Dick Howard. Howard is a retired school administrator with experience in collective bargaining. The first matter of substance at this meeting was raised by Ekstrom, who said that work was slowing down and he possibly was going to have a layoff. He mentioned the names of employees White, Hartman, Adams, and Sidbeck. Murphy asked why these persons were selected, and Ekstrom answered that Hartman was dangerous, White did not show up for work on a Saturday, and Adams missed time. Ekstrom also said that Hartman would not work overtime. At that point Murphy said that maybe Hartman would not work overtime because Respondent did not pay time and a half. Murphy asked what procedure Respondent used for layoffs, and Ekstrom said it was by jobsite except for his better employees. Murphy asked what job the employees were working on, and Ekstrom named the site as Razny Jeweler. Murphy knew from past conversations with employees Denes, Karbowski, and Zych that they also were working on that site, so he asked about them. Ekstrom said that those three persons were his key personnel and would not be laid off.

Murphy orally requested certain information and Ekstrom told him to put it in writing. Ekstrom indicated that he was not interested in signing the standard agreement, so Murphy handed him a 22-page contract proposal. The proposal consisted of the standard agreement, except that the journeyman rate and certain fringe benefits were higher in the proposal than in the standard contract. The proposed contract was for a 6-month term expiring at the same time the standard agreement would expire. Murphy advised Ekstrom to ignore certain prefatory language from in the proposal that was carried over from the standard agreement. Murphy asked that they review the proposal, and Ekstrom said that they would do so. Before the meeting ended Ekstrom said that he wanted to remind the Union that there might be layoffs the coming Friday or the following Friday, and he named again the three employees and this time added the name of Sutter. Murphy complained that three of the employees were involved in an unfair labor charge that had been filed; he asked if this was retribution. Ekstrom said, "no," and claimed that Sutter had cost him five contractors. Murphy said that employees had *Weingarten* rights and suggested that a representative be present when Respondent disciplined unit employees. During this meeting Ekstrom asked the Union how it would classify Respondent's employees in terms of who was an apprentice and who was a journeyman. This was of significance for several reasons, including the wage rate that Respondent would have to pay to those employees. Murphy responded that the Union needed Ekstrom's input on that matter since he knew the qualifications of the employees. Ekstrom also said that employee Caddy had said that he expected to be making $27.50 per hour. Murphy replied that he did not know where Caddy got that figure from. Ekstrom also asked if employee Denes had been told that he would be making $31.50 per hour. Murphy again said that he did not know where the employee got that figure from. During this meeting Ekstrom asked for information regarding the Union's wage packages, benefits, and layoff procedures.

Prior to the next meeting the Union sent Respondent a letter dated November 7 that requested information. Among the items requested in the letter were a list of all employees in the collective-bargaining unit: names, addresses, and a complete list of all current and future jobsite locations. Also requested was existing company practices and policies relating to fringe benefits (if you have such policies and practices in written form, a copy would be helpful) such as: Insurance now in effect (if in booklet form, a copy would be helpful), benefits to employee, dependents, cost per employee, if any, etc.

On November 12, 1997, Respondent sent the Union a letter that stated:

> This letter is being written to make yet another request for the information mentioned at the meeting with Rich Murphy and Jerry Branson on Tuesday, Nov. 4, [sic] 1997 regarding wage packages, Benefits, and laying off procedures as per Union Guidelines. We will expect that information to be faxed to us previous to the Scheduled meeting of Nov. 13, 1997 at 2:00 p.m. at our office at 106 N. Raddant, Batavia, IL by at least 4 hours so that we may look it over and proceed with negotiations properly informed.

[73] At times Respondent refers to this as meeting as occurring on November 4.

That same day, at 8:29 a.m. the Union faxed Respondent the following statement: "The answer to your question about Layoff Order of a Company is as stated in the Proposed letter on page 14, Section 4.20 Subsection A. I hope this will cover any question on layoff order for you." Another letter sent with the fax stated, "Wages for your employees were predetermined *before* the election and can not be changed before we negotiate specifically about wages. Hopefully this answers your concern on this matter. Please feel free to contact this office if you have further concerns."

The next meeting was held on November 13. Murphy opened the meeting by requesting the information specified in the letter he had sent, and the parties reviewed the letter. Murphy asked for the list of employees. In response Ekstrom gave him the pay stubs for the current pay period of Adams, Bateman, Bonta, Caddy, Dunaway, Denes, Glaser, Ekstrom, Karbowski, Sidbeck, Wallace, Sivek, White, and Zych. The stubs did not contain the employees' addresses. Murphy pointed this out to Ekstrom, who replied that the Union did not request the addresses. Murphy showed Ekstrom the letter that specifically requested addresses, and Ekstrom said, "Well, I gave you pay stubs." Next Murphy asked about employees Eric Kanish and Dale Jurgensen. Ekstrom said that Kanish had not worked that week and he did not respond concerning Jurgensen.[74] Murphy then asked for a list of jobsites. Ekstrom handed Murphy a single sheet of yellow line paper that stated:

Jobs*:*
Razny Jewelers
Red Roof Inn
Hair Cuttery

Murphy complained that this was not what he asked for. He claimed that he had asked for addresses. He said that two of the businesses were franchises with various locations and he could not tell what locations were involved. Murphy also asked about residential work. Ekstrom responded that residential work was slowing down and was all but over. However, a summary of records prepared by Respondent clearly shows that Respondent was performing work at more sites than those listed above. Murphy asked for any insurance information and Ekstrom handed him copies of Respondent's dental insurance and life insurance policies. Murphy asked for any layoff procedure, and Ekstrom said that he did not have one. Ekstrom asked for the Union's layoff policy, and Murphy said that it was in their contract proposal. Murphy asked about employee Sidbeck, and Ekstrom said that he no longer works for Respondent, that he had been laid off a few days ago. They then discussed other matters contained in the Union's information request. Ekstrom then asked for a list of all employees who were members of the Union. Branson replied that the Union could not provide that information since its membership lists were private. Howard said, "Come on, that's public knowledge." The Union refused to give that information.

The parties then reviewed the Union's proposal, and Respondent agreed to certain provisions and rejected others. Among the proposals accepted by Respondent were no strike, no-lockout, management rights, bonding, most-favored nations, recognition, code adherence, employee responsibility for improper workmanship, union access, production, journeyman's obligation to provide certain tools, employer obligation to furnish other tools, union security, subletting or assigning work, payday, travel time, check off for working dues, reporting pay, layoff notice and pay, "IBEW assistance," working employer, and substantially all of the safety language. Among the provisions rejected by Respondent were a grievance procedure, a union label, transportation for employees who change jobsites during working hours, a prohibition on employee use of personal conveyance to transport Respondent's tools or materials, appointment of foremen and general foremen, notice to Respondent in the event that unit employees engage in a sympathy strike, division of work by a joint committee in the event of a curtailment of unit work, and order of layoff. Respondent rejected the proposal for the creation of a labor management cooperation committee. Respondent accepted arbitration, except that the F.M.C.S. would provide the arbitrator instead of a council as proposed by the Union. It accepted the Union's proposal concerning apprenticeship and training except those provisions prohibiting apprentices working alone and apprentice to journeymen ratio.[75] The parties disagreed concerning the overtime provisions; Ekstrom proposed that overtime rate commence after 40 hours of work. Concerning wages, the Union proposed that journeymen receive $31.85 per hour and apprentices receive stated percentages of the journeyman rate based on hours worked by the apprentice. For example, an apprentice with 1001—2000 hours' experience would receive 45 percent of the journeyman's rate. Respondent agreed to the apprentice percentages, but it rejected the journeyman's rate. It rejected the Union's language that the Union be the sole and exclusive source of referral of applicants to Respondent and instead proposed that the Union be given 24-hour notice and that after that time Respondent could hire from whatever source; Respondent agreed to other provisions in the Union's referral proposals. Respondent rejected the Union's proposals for contributions to the Union's funds for health and welfare, industry, pension, labor management, and administrative maintenance; it also did not agree to deduct from employees certain amount for employees' vacation fund and working dues. It rejected proposals concerning collection and audit. Respondent agreed to the Union's proposal concerning contributions to the JATC Fund. Concerning the Union's proposal on substance abuse, Respondent requested a copy of the substance abuse policy. Respondent proposed that the Union's language concerning stewards be modified to indicate that stewards were to be selected from Respondent's work force. Respondent also suggested modified language for the Union's proposal concerning hours of work. Finally, Respondent proposed that the contract run until December 31, 1998, instead of May 31, 1998, as suggested by the Union. Near the end of the meeting Murphy said that since the Union had not received all the information that it had requested, and because language in the disputed provisions could impact on the provisions Respondent had accepted, nothing was final until all issues were resolved. During the meeting Ekstrom asked for the information specified in the November 12 letter to the Union, and Murphy said that the information was contained in the Union's proposals.

[74] As described above, the General Counsel introduced into evidence certain time records in support of the allegation that Jurgensen was unlawfully denied overtime. One of the documents is a pay stub for Jurgensen for the same period as the other employees listed above. There is no explanation in the record concerning why Respondent failed to provide the Union with this information.

[75] The parties discussed a side letter to resolve this issue.

On November 18, 1997, Murphy sent Respondent a lengthy request for information covering seven pages. Among other things, the Union requested the name, address, and date of hire of employees in the unit, adding that the payroll stubs previously provided by Respondent does not satisfy this request. The Union also requested the names of all current and future jobsite locations, adding that merely listing Red Roof Inn does not satisfy that request.

On that same day Respondent sent the Union a letter that read:

> This letter is confirm our agreement during negotiations. Pursuant
>
> To your directions, Ekstrom Electric, Inc. will begin a cutback in the work force resulting in job layoffs effective consent [sic] dates:
>
> 1. Dwight Hartman 11/7/97
> 2. Peter Sutter 11/7/97
> 3. Brian Adams 11/7/97
> 4. Steve Sidbeck 11/11/97

Because the employees had been laid off before the letter was sent to the Union, the Union did not respond.

The third bargaining session was held on December 3, 1997, and lasted about 1-1/2 hours. The meeting began with Murphy giving Ekstrom and Howard a copy of the Board's certification of the Union as the collective-bargaining representative of Respondent's employees and asked whether they understood what that meant; they answered that they did, Murphy then asked then why were they giving raises to employees. Ekstrom responded that employee Zych was due for a raise, but Murphy protested that that was not what the Union was told. He asserted that Respondent's practice was to give raises in January and June and that Zych was hired in June and yet received a raise in October. Ekstrom then said that Zych was underpaid to which Murphy responded that Zych was then underpaid before the election also. Ekstrom asserted that his attorney advised him that it was proper to grant the raise, but Murphy said that Ekstrom could not reward somebody for voting against the union. The parties then reviewed the Union request for information contained in the Union's November 18 letter. Murphy asked for the information concerning unit employees and Ekstrom said that he already provided the pay stubs. Murphy then named three employees about whom the Union was not given any information. Ekstrom replied that one of the employees no longer worked for him, another had just been hired and he again did not respond concerning why Respondent did not provide the information on employee Jurgensen. Murphy asked for the addresses of the unit employees and other information that had not yet been provided, and Ekstrom said that the Union would receive it by the end of that week. Ekstrom asked why the Union needed to know the names of newly hired employees, and Murphy answered that the Union had people who were out of work and would like to send them to apply for work. The parties then discussed the Union's request concerning jobsites. Before the meeting Murphy had met with employees and obtained information from them concerning residential sites where the employees were working. Murphy told Ekstrom of this information at the meeting and asked why Respondent had not given it to him. Ekstrom replied that if the Union knew all the information why did he have to give it to them. The discussion then turned to Respondent's practice concerning holiday gifts. Murphy said that he had heard that Respondent gave sizable Christmas bonuses and that he hoped that whatever Respondent had done in the past before the Union that it would continue to do that season. The parties then reviewed the remainder of the Union's written request for information. Near the end of the meeting Ekstrom and Howard asked the Union for a counterproposal. Murphy replied that the Union had already given a written proposal and that they felt like they would be negotiating against themselves if they offered another proposal. At this time Respondent had not offered its proposal for a complete collective-bargaining agreement. The parties agreed to meet again on December 16.

However, that meeting did not take place. At about 11:30 a.m. on that day the Union received a faxed letter from Respondent which stated:

> At our last meeting Rich Murphy said that he would notify us prior to the next meeting, which would have been today at 2:00 p.m. whether or not it was to take place as tentatively scheduled. Since we have not heard from anyone about it by 11:00 am on 12/16/97, Ron Ekstrom and Dick Howard will not be available.
>
> Please call to reschedule at your convenience.

That same day Ekstrom called Branson and asked why the Union had not called to confirm the meeting. Branson replied that he thought that the meeting was confirmed and that they were meeting at 2 p.m. as in the past. Ekstrom said that Murphy was supposed to have called him to confirm if the meeting was definite and that he and Howard would not be available for the meeting since it had not been confirmed.

Meanwhile, on December 8, 1997, the Union received certain information from Respondent. The information included a cover letter from Ekstrom that read:

> Enclosed is all the information that Rich Murphy has requested as per our meeting on Dec. 3,1997. All other information that was asked for in his letter of Nov. 18, 1997 was answered in the meeting. No more information is necessary to my knowledge and all requests have been met.

The Union was given a list of eight jobsites with addresses. However, summary of records prepared and introduced into evidence by Respondent shows that for the week ending December 6, 1997, Respondent worked on 10 projects and the following week Respondent worked on 11 projects. Ekstrom explained this apparent discrepancy by stating that the Red Roof Inn sites were not listed on the December 8 list because he had earlier given the Union that information. However, the evidence shows that Ekstrom made only general mention of Red Roof Inns and did not provide the addresses at which Respondent was working. Respondent also provided a list of 12 employees with their addresses.[76] Also included was a summary of benefits for Respondent's health and life insurance plans as well as a copy of a life insurance policy. The Union also received a copy of a summary of benefits of Respondent's prescription drug health insurance policy as well as a copy of a two-page handout apparently for employees that described certain aspects of Respondent's health insurance plan. Finally,

[76] Although the complaint alleges that Respondent refused to provide this information, at the hearing, after Respondent through Branson offered this evidence, the General Counsel asserted, but did not prove, that this list was incomplete.

the Union also was provided a one-page explanation of Respondent's worker's compensation and employer's liability insurance policy. However, Respondent had a certificate of coverage from its health care insurance company that contained detailed explanation of its health care insurance policy. This document was never provided to the Union.[77]

On December 19, 1997, the Union sent a letter advising Respondent that it could not make unilateral changes in employees' conditions of employment and demanding that the Union be provided an chance to bargain before the changes are made.

The next bargaining session was held January 14, 1998. The meeting lasted about 1 hour and began with Ekstrom and Howard asking for the Union's counterproposal. Murphy replied that the Union did not have one. Ekstrom and Howard then said that they thought that the reason for the meeting was for the Union to present a counterproposal. Murphy answered that they were incorrect. Respondent then handed the Union two letters dated January 14. One letter stated:

> Pursuant to the Agreement during negotiations and in accordance with past practice & policy the following individuals will be layed [sic] off effective 1/16/98.
>
> Richard Caddy will be layed off at the Bear Residence in St. Charles Silver Glen Estates.
>
> Dale Jurgensen will be layed off at the jobsite of 734 N. Elm, Hinsdale.

Murphy denied that there had been any agreement as indicated in the letter, and that the Union had only asked that it be notified prior to any layoff. Murphy asked why Caddy was being laid off and Ekstrom answered that Caddy had been caught sleeping in a van. Ekstrom also said that Jergensen was not a very good electrician. No bargaining occurred concerning the layoffs.

The other letter read:

> According to company policy and past practice we will continue to issue raises as follows.
>
> Trainees will be reviewed every 6 mos. [sic] and given a raise appropriate to progress and ability.
>
> Journeymen will be reviewed annually in June and given a raise appropriate to progress and ability.
>
> We are giving Peter Sivek a raise of $2.00 per hour effective 1/14/98.
>
> We are giving Matt White a raise of $2.00 per hour effective 1/14/98.

Murphy asked about the practice concerning raises and who Ekstrom considered to be journeymen. Ekstrom said that he considered employees making less than $17 per hour to apprentices eligible for raises every 6 months. During this meeting Ekstrom said that he thought that Murphy was not an honest person, because the Union had filed charges against Respondent concerning employee Nate Dunaway. Murphy answered that Dunaway was fired and the Union represented him. Ekstrom asked how many more charges did the Union intend to file. Murphy said that he did not know and that there might be more. Ekstrom's response was, "Well, I've had enough. That's it. We're out of here." Ekstrom added that when the Union had a counterproposal they would meet again.

On January 21, 1998, the Union sent Respondent a letter that began:

> At our last meeting on January 14, 1998 Dick Howard and you requested Local 461, IBEW to submit to you a counter proposal to our original proposal. It is still our position that submitting another proposal is not only counter productive on our behalf but it is in all reality negotiating a contract with ourselves. The union appreciates the fact that your negotiating team has reviewed our proposal from our first meeting November 5, 1997 but we had hoped that your imput regarding our 22-page proposal would be more than a yes and no to the sections of the contract. Jerry Branson and I were informed by Dick Howard that upon submission of an amended proposal, we would schedule another meeting.
>
> Therefore, having stated our case, but for the sake of good faith bargaining on our behalf we will comply with your wishes in hope that we will reach an agreement.

The letter then renewed the earlier proposal except that the Union's proposal for the journeyman wage rate was lowered from $31.85 per hour to $30.85 per hour. It also reduced the demands for contributions to the health and welfare fund from 14 percent to 13 percent, the JATC fund from 1.75 percent to 1.6 percent, and the pension fund from 20 percent to 19 percent. The wages and benefits in this proposal were still higher than in the Union's standard agreement.

On March 20, 1998, Respondent sent the Union a letter that read:

> I spoke to you a day of two after receiving the January 21st letter from Murphy at which time I told you that the proposal was unacceptable for the following reasons:
>
> (a) The wage rate is too high.
>
> (b) It does not describe where current employees fall into the apprentice portion, and
>
> (c) The benefit package is totally out of line from what I proposed.
>
> Finally, your only proposal was for an agreement which expired on May 31, 1998, which is also unacceptable. As I said, if you want to meet, we are willing to do so.

At the initial stages of this proceeding, I encouraged the parties to meet to attempt to reach a contract that might result in a settlement of the entire case. Pursuant to that suggestion the parties met on April 3, 1998. The meeting lasted about 1 hour. Murphy handed Ekstrom and Howard copies of the Union's latest demands and asked if they needed a copy of the Union's original proposal. They responded that they had copies. Murphy said that now that they had two of the Union's proposals, he would like a written counterproposal. Ekstrom said that he would do that and that it would take a couple of weeks and then they would set up another meeting.

During the initial days of hearing, I asked whether Respondent had ever made a proposal for a complete contract that it would sign, and I was told that it had not. After that time, on April 27. 1998, Respondent sent the Union a complete contract proposal that Ekstrom indicated Respondent was willing to sign. That proposal consisted of the Union written proposal previously described with a term of May 1, 1998, through April 30, 1999, with the agreements, deletions, and changes that Ek-

[77] I reject Ekstrom's assertion that he offered Murphy a copy of this document and Murphy refused. This testimony strikes me as sheer fabrication, and serves as another example of why I have been reluctant to credit Ekstrom's testimony.

strom had earlier indicated to the Union. In addition, Respondent's proposal was for a journeyman rate of $24 per hour and benefits would remain essentially at the level Respondent was then providing to employees.

By letter dated May 19, 1998, Ekstrom advised the Union that Respondent was willing to meet with the Union concerning the contract. The letter indicated that it was Ekstrom's understanding that the Union was going to produce a counterproposal before the next meeting, yet none had been received. The Union responded to this letter the same day. In its letter the Union stated that it was the Union that had contacted the Respondent and that it was Respondent that wanted a counterproposal from the Union and that the proposal sent by Respondent "was just the same as the one we went over on November 13th. We need something other than our proposal which you marked yes and no."[78]

Analysis

The complaint alleges that Respondent refused to provide the Union with the names and addresses of its unit employees, the jobsite locations for Respondent's commercial and residential work, and the health plan policy for unit employees. The standard to be applied to such allegations is well settled. An employer must provide to a union requested information that has at least probable relevance and use to the union in fulfilling its role as the collective-bargaining representative of the employees. *NLRB v. Acme Industrial Co.,* 385 U.S. 432 (1967).

Turning first to the matter of the names and address of unit employees, there is no doubt that the Union is entitled to such information. *Deadline Express,* 313 NLRB 1244 (1994). The facts show that on November 7 the Union requested this information. On November 13 Respondent provided a partial list of names and no addresses. On November 18 the Union renewed its request for this information. On December 8 Respondent provided the Union with a list of 12 names and addresses for unit employees.

As indicated above, the General Counsel originally contended that this information was never provided to the Union. At the hearing, the General Counsel shifted to take the position that the information provided was not complete. Now in its brief, the General Counsel appears to concede that the December 8 list of names and addresses is complete; he now argues that the unfair labor practice occurred in the delay. It is, of course, well settled that an unreasonable delay in providing requested information may constitute an unfair labor practice. *Interstate Food Processing,* 283 NLRB 303, 306 (1987), citing *U.S. Gypsum Co.,* 200 NLRB 305, 308 (1972). Here, Respondent presented some of the information on November 13, and after the Union again requested the information, Respondent informed the Union at the December 3 meeting that it would have the information shortly, and it was provided on about December 8. Under the circumstances, especially considering that part of the information was provided promptly and that all the information was provided in about a month, I conclude the delay was not so unreasonable so as to constitute an unfair labor practice. Accordingly, I shall dismiss this allegation of the complaint.

Turning now to the allegation that Respondent unlawfully failed to provide the locations of its commercial and residential worksites, again there is no doubt that the Union is entitled to such information. *Excel Fire Protection Co.,* 308 NLRB 241, 247 (1992). The facts show that the Union requested this information on November 7 and Respondent provided only the names of some of the locations and none of the addresses on November 13. The Union renewed its request on November 18, and on December 8 it was provided with a list of 8 jobsites and addresses. However, that list was incomplete, and Respondent offers no further explanation. Respondent also argues that since it indicated in its December 8 letter to the Union that it felt it had provided all the information that the Union had requested, and the Union never corrected that assertion, that no unfair labor practice was committed. I disagree. The Union had already twice requested the information. It is not required to pull the information from Respondent. Rather, it is the responsibility of Respondent to provide the information. By failing to provide the location of its jobsites to the Union, Respondent violated Section 8(a)(5) and (1).

Turning to the allegation that Respondent unlawfully failed to provide the Union with information concerning its health insurance policy, this information is also relevant and must be provided upon request. *Seiler Tank Truck Service,* 307 NLRB 1090, 1101 (1992). Here again the Union requested the information on November 7 and again on November 18. While it is undisputed that certain information was provided, Respondent never provide the Union with a copy of the "certificate of coverage" that explained in detail Respondent's health care insurance policy. By failing to provide the Union with explanation of the coverage of its health insurance policy, Respondent violated Section 8(a)(5) and (1).

The General Counsel argues that Respondent unlawfully failed to other information to the Union. However, those assertions were never made in the complaint, nor did the General Counsel move to amend the complaint at the hearing to add those assertions. This was despite my urging that because of the length and complexity of this case the General Counsel would have been well advised to do so to be certain that Respondent was given the specific notice to which it is entitled. Without this notice it cannot be concluded that Respondent put on all the evidence it might have had it received the notice. For example, Respondent in this case did present evidence that it in fact provided the Union with certain information that the General Counsel alleged had not been provided. I conclude that it is unfair to Respondent for the General Counsel to make these assertions for the first time in his brief, and I shall not address them.

The General Counsel alleges that Respondent made certain unlawful unilateral changes in terms and conditions of employment. The Act prevents an employer from unilaterally changing terms and conditions of employment of employees represented by a labor organization. *NLRB v. Katz,* 369 U.S. 736 (1962). Before making such changes an employer must first give notice to the union and provide it with an opportunity to bargain over the proposed changes. *Tuskegee Area Transportation Systems,* 308 NLRB 251 (1992).

[78] The facts concerning the bargaining sessions are based on the testimony of Murphy and Branson. Although Branson was at times uncertain as to details, I am convinced that he was careful to give accurate testimony. I have already indicated that I do not credit Ekstrom's testimony. I have also considered the testimony of Howard. To the extent that it conflicts with the facts set forth above, I do not credit it. Howard's testimony was often general and lacking in detail. His demeanor appeared hesitant and at times uncertain. Under all the circumstances, I consider his testimony less reliable than that of the union witnesses.

The evidence set forth in the section above shows that Respondent made the following changes in the terms and conditions of employment without first giving the Union notice of the changes. Respondent eliminated the use of company owned vans for transportation purposes for employees Karbowski and Denes, it reassigned those employees from doing commercial work to doing exclusively residential work, it reduced the rate of pay for employee Jurgensen, it eliminated all overtime work for employee Jurgensen. All of these changes impacted the terms and conditions of unit employees. While some of these matters in isolation might not separately rise to the level of an unfair labor practice, taken together they show an unlawful disregard for the proper role of the Union as the collective-bargaining representative Respondent's employees. The Board has found these types of unilateral changes in working conditions to be unlawful. See generally *Tel Data Corp.,* 315 NLRB 364 (1994); *Equitable Resources Energy Co.,* 307 NLRB 730, 733 (1992); *Mike O'Connor Chevrolet,* 209 NLRB 701 (1974). I conclude that Respondent has violated Section 8(a)(5) and (1) of the Act by such conduct.

The General Counsel's allegation concerning whether the layoffs independently violated Section 8(a)(5) presents close questions regarding the adequacy of Respondent's prelayoff notice to the Union and the legality of such conduct during the course of negotiations. However, I find it unnecessary to resolve those questions. I have already concluded above that the layoffs violated Section 8(a)(3) and the remedy for those violations obviates the need for any further remedy. Moreover, the breadth of the cease-and-desist order that I have entered in this case would prevent any such unlawful conduct in the future. Under these circumstances, it is unnecessary to resolve this matter.

Finally, the General Counsel alleges that Respondent engaged in unlawful bad-faith bargaining. In resolving such allegations the Board examines the totality of the employer's conduct, both away from and at the bargaining table, for evidence of its real desire to reach agreement. *South Carolina Baptist Ministries,* 310 NLRB 156 (1993).

The facts described above show that Respondent was extremely hostile toward the Union and repeatedly violated the Act. It also violated Section 8(a)(5) by failing to fully provide the Union with information to which the Union was lawfully entitled. Respondent also violated that Section of the Act by engaging in unlawful unilateral conduct that demonstrated a disregard for the lawful role of the Union as the collective-bargaining representative of the employees. Even more revealing on this issue are the repeated statements made by Ekstrom that Respondent was just going through the motion of engaging in bargaining with the Union. These statements are nothing less than admissions that Respondent was engaging in bad-faith bargaining. Respondent's conduct at the bargaining table confirms this conclusion. Respondent made no complete proposal for a contract until after the hearing started in this case. Instead, it took the position that the Union should bargain down from the Union's proposals while it made no effort to reach an accommodation with the Union by suggesting a contract that it would sign. I also note that Respondent made no effort to reach any compromise on monetary matters. While this alone may be an indicia lawful hard bargaining, in context this appears to be part of Respondent's stated effort of just going through the motions. By failing to bargain in good faith with the Union, Respondent violated Section 8(a)(5) and (1).

Respondent raises as a defense to this allegation the assertion that the Union was out to destroy its business. In support of this argument Respondent presented the testimony of Carl Guse. Guse came out of retirement in 1997 to build a house for his daughter in Riverside, Illinois; he hired Respondent to perform electrical work on the house. Guse testified that in December, Karbowski told him that he was guaranteed a job by the Union, that Denes and Karbowski told him that they were guaranteed 40 hours of work by the Union at a time when they were sitting in the basement not working, that Denes said on more than one occasion that it was the intention of the Union to break Respondent, and that he had some major concerns about their productivity. Denes and Karbowski denied that they told Guse that the Union had directed them not to be working as hard as they had been or that Murphy told them that they should not be working hard since they were not getting paid enough. They also denied that they told Guse that they were guaranteed 40 hours per week. Denes stated that Murphy told him to give 100 percent while on the job. I do not credit the testimony of Guse; based on his demeanor, it appears that his testimony was designed to please Respondent.

Respondent in its brief contends that it was the Union that failed to bargain in good faith. However, I find no substantial evidence to support that assertion, even assuming that it could serve to excuse Respondent's failure to bargain in good faith.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1) of the Act by

(a) Instructing an employee to remove his union hat and union T-shirt while at work.

(b) Giving the impression to an employee that it was keeping the union activities of its employees under surveillance.

(c) Threatening employees with unspecified reprisals because they support a union.

(d) Threatening to close its facility and relocate it because employees support a union.

(e) Threatening to discharge and layoff employees because they support a union.

(f) Interrogating employees concerning their union activity and support and the union activity and support of other employees.

(g) Instructing employees to report the union activity of other employees.

(h) Telling employees that they are fired because of their union support.

(i) Threatening to withhold wage increases from an employee because the employee supported a union.

(j) Giving the impression to employees that their union activity will be futile.

(k) Falsely blaming the Union for the smaller amounts given as a Christmas bonus.

(l) Threatening employees with bodily harm because they support a union.

4. The Respondent violated Section 8(a)(3) and (1) of the Act by:

(a) Refusing to permit Anthony Karbowski and Imre Denes to continue to use company owned vehicles because those employees engaged in a lawful strike.

(b) Reassigning Anthony Karbowski and Imre Denes from commercial work to residential work, because the employees supported a union.

(c) Reducing the rate of pay for Dale Jurgensen because he supported a union.

(d) Eliminating overtime work for Dale Jurgensen, because he supported a union.

(e) Discharging Warren Andrews, Greg Goorsky, Reginald Finegan, Martin Fredian, Nathan Dunaway, and Peter Sivek because they engaged union activity.

(f) By laying off Stephen Sidbeck, Peter Sutter, Dwight Hartman, Richard Caddy, and Dale Jurgensen, because they engage in union activity.

5. Respondent violated Section 8(a)(5) and (1) of the Act by

(a) Failing to provide the Union with information concerning the location of its jobsites and a copy of an explanation of its health insurance coverage.

(b) Unilaterally eliminating the use of company owned vehicles for transportation purposes, reassigning employees from doing commercial work to doing residential work, reducing the rate of pay of an employee, and eliminating overtime work for an employee.

(c) Failing to bargain in good faith with the Union.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily discharged Warren Andrews, Greg Goorsky, Reginald Finegan, Martin Fredian, Nathan Dunaway, and Peter Sivek and having discriminatorily laid off Stephen Sidbeck, Peter Sutter, Dwight Hartman, Richard Caddy, and Dale Jurgensen, it must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The Respondent has discriminatorily refused to permit Anthony Karbowski and Imre Denes to continue to use company owned vehicles, and transferred these employees from commercial work to residential work. Normally a restoration remedy would be appropriate; however, the record shows that Respondent no longer employs these employees and such a remedy is not possible as to these employees. However, Respondent must make Karbowski and Denes whole for losses they suffered as a result of Respondent's discriminatory conduct, with interest, and, upon request by the Union, it must restore the practice that existed before it engaged in its unlawful conduct.

The Respondent having unlawfully reduced the wage rate of Dale Jurgensen and unlawfully eliminated overtime work for Jurgensen, it must restore the wage rate and overtime opportunities to the levels that existed before the discrimination and make Jurgensen whole for the losses he suffered with interest.

The Respondent having unlawfully failed to provide the Union with requested information, it must provide to the Union that information.

The Respondent having engaged in bad-faith bargaining during the Union's certification year, it shall be ordered to bargain in good faith and I shall order that the certification year be extended for a 1-year period starting from the Respondent's commences lawful bargaining with the Union. *Mar-Jac Poultry Co.,* 136 NLRB 785 (1962). Respondent argues in its brief that turnover among unit employees precludes an order requiring it to bargain with the Union, citing *Harper Collins San Francisco Co. v. NLRB,* 79 F.3d 1324 (2d Cir. 1996). That argument is without merit. Here, I have concluded that it was Respondent's unlawful conduct that caused the turnover, and it is axiomatic that a wrongdoer cannot assert its wrongdoing as a defense.

Because of Respondent's egregious and widespread misconduct, demonstrating a general disregard for the employees' fundamental rights, I find it necessary to issue a broad order requiring the Respondent to cease and desist from infringing in any other manner on rights guaranteed employees by Section 7 of the Act. *Hickmott Foods*, 242 NLRB 1357 (1979).

[Recommended Order omitted from publication.]